

**A SUGGESTED STRATEGY FOR COMPLETION OF
CANADA'S NORTHERN REGULATORY REVIEW,
1984-85**

**Prepared for
Northern Regulatory Review Group
Department of Indian Affairs and Northern Development
Ottawa**

**by
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25 September 1984



WESTERN ECOLOGICAL SERVICES (B.C.) LTD.

Mr. Nigel Wilford
Director, Planning
Northern Regulatory Review
Indian Affairs and Northern Development
Ottawa, Ontario

25 September 1984

Dear Mr. Wilford:

We are pleased to enclose 20 copies of our final report entitled "A Suggested Strategy for Completion of Canada's Northern Regulatory Review, 1984-1985". The report was prepared between August 27 and September 22 and we consider it to be a preliminary overview that meets the five major points of the Terms of Reference:

- i) objectively review the terms of reference dated July 1984;
- ii) suggest further refinements to the goals of the review;
- iii) specify the types of data needed to analyse the problem and to identify ways to improve Northern Regulatory procedures;
- iv) advise on the selection of case studies and other aspects of study design that would allow the problem to be researched efficiently and on schedule; and
- v) advise on terms of reference for further work during the review phase and, if requested by the Departmental Representative, recommend persons qualified to undertake specific tasks in the review phase.

As requested, the report is to be accompanied by a briefing session in Ottawa to senior DIAND personnel with interests in the Northern Regulatory Review.

We appreciated the opportunity to assist your Department with your review. On behalf of the study team, I would like to wish you continued success with the Northern Regulatory Review.

Yours truly,

WESTERN ECOLOGICAL SERVICES LTD.

PER:

E.B. Peterson
President

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Ms. Glenda Mersky and Ms. Michelle Peterson were responsible for word processing and report assembly, and we particularly appreciate their efforts.

1. NORTHERN REGULATORY REVIEW

The Northern Regulatory Review is part of a government-wide attempt, through the Office of Coordinator, Regulatory Reform (OCRR) "to improve public administration through reforms to the regulatory process" and "to reduce the regulatory burden on the Canadian economy" (Stanbury and Thompson 1982). As reviewed by the latter authors, these two objectives were elaborated in a work plan prepared by OCRR and approved by Cabinet in October 1980:

Objective 1:

To improve public administration through reforms to the regulatory process.

- rationalization of regulatory legislation by an omnibus amendment bill
- elimination by selected departments of unenforceable, obsolete, contradictory and duplicative regulations
- improved departmental regulatory impact assessments prior to decisions on new regulations
- inclusions of regulatory policies/programs in departmental evaluation schedules
- decision on procedures for cabinet review of decisions of regulatory agencies
- decision on government policy directives to regulatory agencies
- preparation of job descriptions for positions on federal regulatory agencies.

Objective 2:

To reduce the regulatory burden on the Canadian economy.

- legislative amendments to reduce and rationalize federal records retention requirements
- improved private sector access to the regulatory process, e.g., consultative mechanisms, [regulatory] agenda, access to information, funding
- departmental responses and decisions of the ECC final recommendations on regulatory reform
- public notice of new records retention requirements.

The intended role of the OCRR is to encourage ministers and their officials to consider regulatory changes within their respective departments. The Northern Regulatory Review is a part of that initiative. Events that preceded or accompanied the 1980 activities of OCRR are outlined in section 1.1.

The agency setting for the Northern Regulatory Review, as outlined by Senator Hastings in 1984, is as follows:

"Let me deal first with the Northern Regulatory Review. The subcommittee, in its examination of northern development and the transportation of hydrocarbons north of 60°, recognized that the process of arriving at decisions on major projects had evolved from a very simple cabinet approval to a vast array of complex departmental and regulatory procedures. The objectives, therefore, of the Northern Regulatory Review which has been put in place as a result of our recommendations, seek to identify all of the gaps, the overlaps and the bottlenecks with a view to streamlining and possibly simplifying the government processes that bear upon economic development. At present, the review is in the form of a proposal. This proposal will be presented to cabinet and is expected to take up to 18 months to complete.

With regard to the Northern Regulatory Review, we have the responses of the National Energy Board. The board, on its part, is now conducting a massive overhaul of its regulations and information requirements to simplify, clarify and otherwise streamline provisions to the greatest extent possible. It is the view of the board that the committee had succeeded in increasing pressure to delete certain regulatory requirements. In addition, the National Energy Board has some 25 projects under review, many of which will be finished at the end of 1984. That is to say, there are 25 projects under review designed to streamline the procedures and requirements of the National Energy Board in reaching its decisions.

In addition, three measures have now been put in place by the National Energy Board to assist proponents in putting forward their programs to the board and identifying areas of concern prior to these programs being examined by the board officially. In other words, informal pre-hearing conferences with proponents are held where areas of concern can be identified. In addition, there are meetings between the National Energy Board staff and the prospective applicants, again prior to the proponent putting forward the documents for its official application and, finally, there are phased hearings. These measures have all been put in place as a result of our report.

In addition, there is increased co-operation between the National Energy Board and the Canadian Oil and Gas Lands Administration with respect to technical regulations for offshore pipelines where both administrations are involved. In other words, they are seeking to identify

and put in place co-ordination of the various departments, thereby assisting the proponents in their respective projects." (The Senate of Canada, Debates of the Senate, 2nd Session, 32nd Parliament, Volume 129, Number 49, 20 June 1984)

The quotation above implies that analyses of current regulatory practices are in progress within the National Energy Board (NEB) and the Canadian Oil and Gas Lands Administration (COGLA), but the Department of Indian Affairs and Northern Development (DIAND) is noticeably not mentioned. Progress to date within DIAND is outlined in section 1.1. The objectives and rationale of the Northern Regulatory Review within DIAND are reproduced in Attachment 1. The desired goal of the review in a multi-agency context is co-ordination of government policy towards northern resource development and a streamlining of regulatory approval processes. The latter would include:

- i) Implementation of a mechanism, involving all agencies of government that administer policies relating to or affected by resource development activities, that would coordinate the definition of policies to achieve government objectives.
- ii) Strengthening of linkages between decisions made by various agencies of government, with respect to:
 - technical and other information;
 - procedures to be followed by proponents and regulatory agencies;
 - sequences and interrelationships among regulatory authorities, both federal and territorial;
 - implementation of policy objectives through the regulatory approvals process.
- iii) Development of effective approaches to self-assessment by industry and performance monitoring by government, to achieve regulatory objectives.

- iv) Improvement of the responsiveness of regulatory mechanisms to project decision points and project planning.
- v) Development of methods to assure uniform application of the regulations.
- vi) Development of methods to encourage more effective environmental management and resource development and realization of socio-economic benefits to northern residents.

In summary, the Northern Regulatory Review hopes to reach a consensus on:

- overlaps, duplications and gaps in regulatory processes;
- methods to reduce complexity and to shorten the approval period;
- evaluation of alternative approval delivery mechanisms, such as "one-window" approaches, "approval-in-principle" concepts, or project co-ordination; and
- evaluation of the adequacy of public processes involving hearings, community consultations and interest groups.

1.1 Work Completed to Date

Previous studies and proposals for regulatory reform in Canada have been detailed by Stanbury and Thompson (1982) and are listed below in chronological order, beginning with the 1976 report from the Privy Council Office. It is noteworthy that the origins of proposals for regulatory reform in Canada are thought to flow from the imposition of a massive regulatory program in 1975, namely the Anti-Inflation Program.

It is useful to list the studies which link the 1976 initiatives to the present Northern Regulatory Review:

- i) **The Way Ahead: A Framework For Discussion** prepared by the Privy Council Office (Government of Canada 1976)
- ii) Socio-economic impact analysis, as provided for in the 1978 Treasury Board **Administrative Policy Manual** (Government of Canada 1979)
- iii) **Responsible Regulation** prepared as part of the Economic Council's Regulation Reference (Economic Council of Canada 1979)
- iv) Studies published by the Institute for Research on Public Policy as part of the Regulation and Government Intervention Program initiated in 1977 (Stanbury and Thompson 1982)
- v) In 1978 the Ontario Economic Council's **Issues and Alternatives** volume featured a number of papers on government regulation (Stanbury and Thompson 1982)
- vi) In the 1979 Speech from the Throne, the Government of Ontario declared that "if private enterprise is to operate effectively, it must be freed from obstacles created by excessive government regulation" and a number of hearings and studies followed (Stanbury and Thompson 1982)
- vii) A variety of studies by the Law Reform Commission of Canada, as outlined by Stanbury and Thompson (1982) and extending to the most recent Law Reform Commission report by Schrecker (1984)

- viii) The Royal Commission on Financial Management and Accountability (the Lambert Commission) presented its final report in 1979, in which it addressed several issues relevant to government regulation (Stanbury and Thompson 1982)
- ix) In September 1979, Prime Minister Clark appointed Mr. Perrin Beatty to head up his government's efforts on regulatory reform, resulting in establishment of the Office of the Coordinator, Regulatory Reform, within the Treasury Board (Stanbury and Thompson 1982).
- x) In October 1980, the federal Cabinet approved a plan prepared by the Office of the Coordinator, Regulatory Reform, in which there were two principle objectives: to improve public administration through reforms to the regulatory process and to reduce the regulatory burden on the Canadian economy (Stanbury and Thompson 1982)
- xi) The Parliamentary Task Force on Regulatory Reform (the Peterson Committee) was appointed in 1980 "to examine and report upon government regulation in order to minimize the burden on the private sector". The committee's 29 recommendations differed little from those of the Economic Council of Canada, the Ontario Economic Council, the Law Reform Commission of Canada, the Lambert Commission and many studies by academics. Unfortunately, despite the pragmatic recommendations made by this committee, there has been no direct follow-up action (Stanbury and Thompson 1982).

Regulatory reforms reviewed by Stanbury and Thompson up to 1982 have been superseded by two other major studies: the Task Force Report on Pipeline Construction costs (Horte 1983) and the Report of the Special Committee on the Northern

Pipeline (Hastings 1983). Recommendations made in those two reports provided a particular stimulus to the Northern Regulatory Review now underway in DIAND.

For the Northern Regulatory Review, a number of steps have been taken within individual departments and agencies. The quotation from Senator Hastings in Section 1 provides the setting within NEB and COGLA. Within DIAND the work plan for the Northern Regulatory Review involves two phases, a planning phase and a review phase. The planning phase is drawing to an end with preparation of the present paper which was commissioned to propose a strategy for completion of the review phase.

Work to date by the Northern Regulatory Review Group within DIAND has involved consultation with other federal and territorial departments and agencies, industry and public interest groups. Consultations have included discussions on: definition of policy and assessment process problems; definition of regulatory approval problems; strategy for dealing with these; and interagency processes of consultation, action and review of progress. In support of the activities outlined above, a review of literature on regulatory procedures is also underway.

The Northern Regulatory Review Group has received a number of submissions to date from representatives of the petroleum industry, from the Yukon and Northwest Territories governments, from several other federal government departments and from Dene representatives in the Northwest Territories. The key regulatory problems identified in those submissions are incorporated in Attachment 2 which is a synopsis of viewpoints on the present regulatory approach in northern Canada.

1.2 Terms of Reference for Present Review

As outlined in the preceding sections, within DIAND this project is nearing the end of the planning phase and the department is ready to proceed with the review phase. The study leading to this report had five specific objectives, all with the intent of suggesting a strategy for completion of DIAND's Northern Regulatory Review:

- i) objectively review the terms of reference for the Northern Regulatory Review dated July 1984;
- ii) suggest further refinements to the goals of the review;
- iii) specify the types of data needed to analyse the problem and to identify ways to improve northern regulatory procedures;
- iv) advise on the selection of case studies and other aspects of study design that would allow the problem to be researched efficiently and on schedule; and
- v) advise on terms of reference for further work during the review phase and, if requested by the Departmental Representative, recommend persons qualified to undertake specific tasks in the review phase.

It was recognized that the Northern Regulatory Review is part of a larger program underway through the Office of Coordinator, Regulatory Reform, as outlined in the preceding section. The five specific objectives listed above were approached in full recognition that the Northern Regulatory Review is also inseparable from several other current initiatives that can be expected to result in profound changes to the federal regulatory approach as we know it today. Foremost amongst these initiatives is the ministerial task force under the chairmanship of Mr. Erik Nielsen which will examine government structure, government programs and the government's relationships with various regulatory agencies.

The search for alternative regulatory approaches is also actively continuing within the governments of Yukon and Northwest Territories. There are also new regulatory questions for lands that will be administered by native organizations in northern Canada. For example, the Western Arctic Claim of the Inuvialuit Final Agreement contains several examples of new regulatory considerations that will be involved with those seeking access to, and across, Inuvialuit lands.

1.3 Issues Bearing upon the Terms of Reference

The suggestion that regulation should be of less concern in places where few people live is, surprisingly, still heard with considerable frequency in Canada. If carried to its extreme, such a viewpoint would imply that little regulation should be needed in northern Canada because the Northwest Territories and Yukon are barely visible when Canada is viewed as an isodemographic map (Figure 1). Fortunately, the degree to which public interest focusses on regulation of land use and resource development activities is not in proportion to population density within Canada. This review accepts it as a fact of Canadian life that as a nation we have a strong interest in regulatory procedures for all parts of Canada and not just for those more densely populated regions that dominate the isodemographic map.

The widespread national interest in northern regulatory matters is, in a sense, magnified by the fact that northern operational and logistical problems translate into high operating costs, and constrained operating conditions and time frames (Hunt and Lucas 1980). In these circumstances, government regulatory requirements assume a greater significance than similar regulations applied to conventional industrial development activities in southern Canada. If one

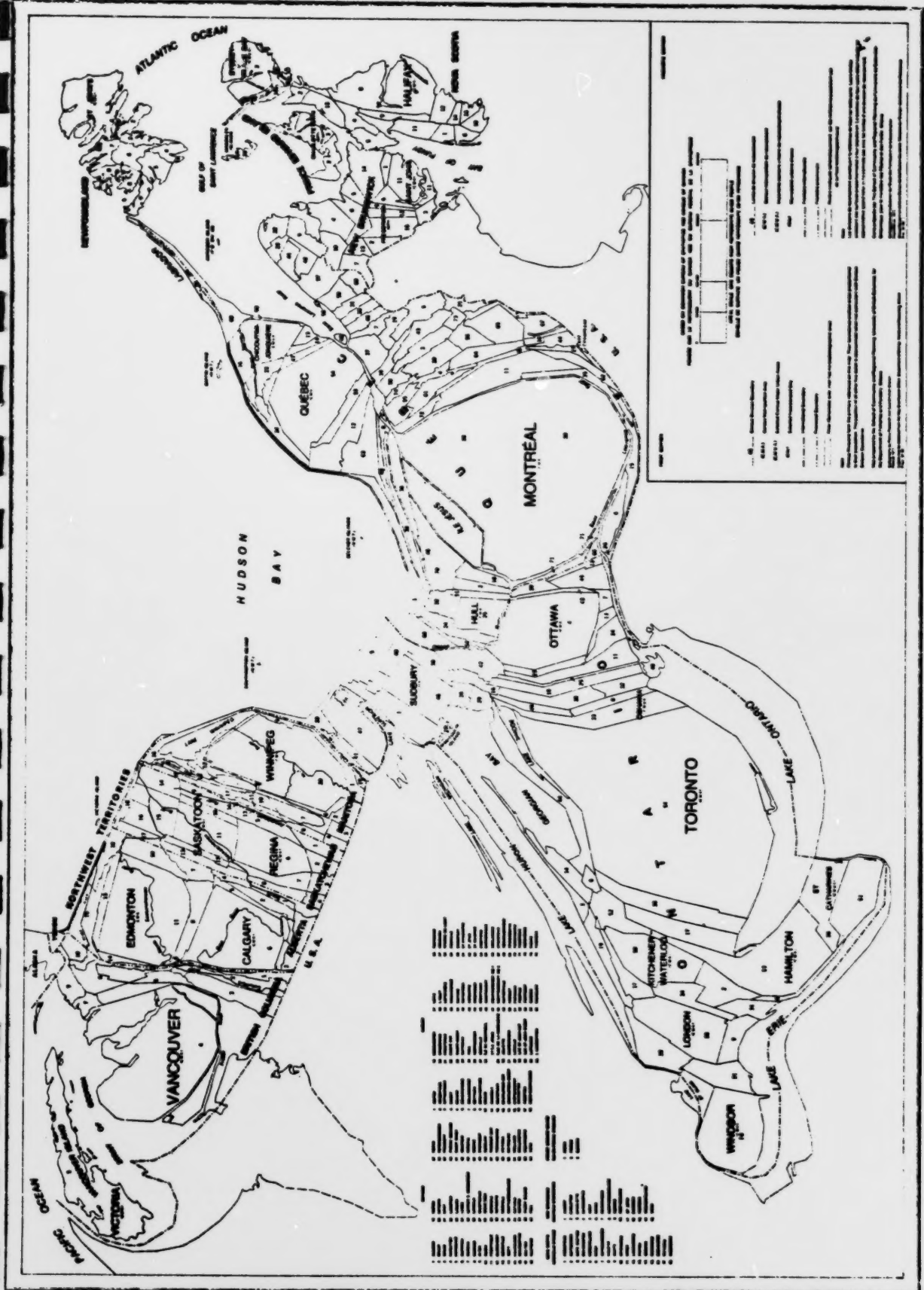


Figure 1. Isodemographic Map of Canada. (Map prepared by School of Community and Regional Planning, University of British Columbia, for Department of Fisheries and Forestry, Ottawa, 1971, First Edition.)

could quantitatively map the intensity of interest in regulatory matters and the economic significance of those regulatory interests, the resulting picture would be diametrically opposed to the map portrayed in Figure 1.

Public expectations for governments to take explicit measures "to protect the environment" emerged in the 1960's and continued through the 1970's (Thompson 1980). The resulting proliferation of environmental protection regulation is only recently meeting an increased frequency of questioning and re-evaluation. Despite a wide array of criticisms about the regulatory maze that now exists, as shown by the sample quotations in Attachment 2, there are still issues and differences of opinion and they are of an enduring character. For example, Thompson (1980) cited surveys of the late 1970's which indicated that public attitudes at that time still gave environmental protection measures a high priority on the public agenda in both Canada and the United States. Even today, a study paper recently released by the Law Reform Commission of Canada (Schrecker 1984) suggested that regulations lose legitimacy because they emerge from secret talks between government and industry. The same analyst stated that environmental issues are seldom politically important because, although many people may be involved in an environmental change, they are not sufficiently involved to devote time and money to environmental protection. Under these circumstances it is not surprising that a common thread runs through the quotations in Attachment 2.

It is recognized that the next phase of this review must be designed to address a number of complex institutional relationships that go far beyond an analysis of regulatory procedures under individual statutes. The examples on the next page identify several other issues that add further definition to the terms of reference listed in Section 1.2.

- i) relationships between regulatory approaches that flow from DIAND policies and those that flow from the Development Impact Zone (DIZ) policy of the Energy and Resources Development Secretariat (Government of the Northwest Territories 1983);
- ii) factors that influence the time requirements for decision-making, with particular attention to new and untested circumstances such as the option of referral to FEARO for development proposals on fee simple lands allocated under the Western Arctic (Inuvialuit) Claims Settlement Act and the question of whether laws of general application pertain to all lands, including fee simple lands, designated under that act;
- iii) relationships between time requirements for decision-making and overlap between procedures under the jurisdiction of DIAND, COGLA, NEB, FEARO, DIZ Groups, and administrators of Inuvialuit private lands;
- iv) the potential impact upon northern regulatory procedures of various changes that could result from the expected review of legislation governing Canada Lands, the National Energy Program and overall departmental structure of the federal government;
- v) the potential impact upon northern regulatory procedures if there is implementation of the land-use planning agreements between the federal and territorial governments, particularly the establishment of a land-use planning commission in each of the two northern territories;
- vi) the potential impact upon northern regulatory procedures if concrete steps are taken to implement concepts such

as: national and regional impacts and benefits; increased use of "approval-in-principle" for development proposals; decreased use of general guidelines and increased use of project-specific approaches to evaluation of environmental and socio-economic impacts; appointment of a government-employed manager for each specific development project; increased use of joint federal/territorial review and approval processes; and more precise definition of "one-window" approaches.

Several of the issues listed above are reviewed in subsequent sections of this report and are considered to be essential features for incorporation into the study strategy for the next phase of the Northern Regulatory Review.

2. LIMITATIONS OF THE CASE STUDY APPROACH

The July 1984 letter from Mr. G.N. Faulkner to those interested in the Northern Regulatory Review indicated that two key steps were anticipated as the review moved into its next phase. One step would take the form of effective involvement from all interested parties, by means of workshops or advisory committees, so that problems could be properly defined, and recommendations for change could be tested. The other step would involve the development of case studies of the Polaris Mine Project and the Norman Wells Oilfield Development and Pipeline Project, using an empirical approach to identify types and causes of delay, effectiveness of the approval process, and areas of apparent duplication by different government bodies.

This mid-point appraisal of the Northern Regulatory Review began with compilation of recorded viewpoints on the subject and these are summarized in Attachment 2. The viewpoints of representatives from those industries subject to regulation, from people in government generally and from regulatory agencies specifically, and from a variety of public interest and academic sources show a remarkable similarity in their condemnation of the present approach to regulatory matters in northern Canada.

This observation led to our hypothesis that further case studies would accomplish little more than an elaboration of the opinions and conclusions recorded in Attachment 2. After all, the best case study is the collective experience that lies behind the diverse comments of those quoted at the end of this report.

Consequently, early in this review we developed a bias in favour of Mr. Faulkner's first suggested task -- formalization

of multilateral arrangements through workshops and advisory committees that would involve all interested parties -- and a bias against the case study approach.

In the limited time available for this review, we did, however, wish to consider the pros and cons of the case study approach. This was done in two ways. First, we examined a relatively large number of reports that used the case study approach to document regulatory problems in Canada and, wherever possible, in northern Canada specifically. As outlined in Section 5.2, we concluded that the case study approach has dominated analyses of regulatory problems to date and we are unconvinced that the addition of two or more case studies would increase the degree to which one could extrapolate and apply the conclusions from any one case study.

The second way that we examined the case study approach was to briefly examine the regulatory circumstances surrounding the two potential case studies identified in Mr. Faulkner's July 1984 letter -- the Norman Wells Project and the Polaris Mine Project. Sections 2.1 and 2.2 summarize the regulatory aspects of these two projects and Section 2.3 contains our critique of such an approach.

2.1 Norman Wells Oilfield Development and Pipeline Project

The Norman Wells EARP Panel concluded that the Norman Wells Oilfield Development and Pipeline Project had potential adverse impacts. Consequently, that EARP Panel recommended a delay of at least one year from the originally applied for commencement of active project development so that both the proponents and the federal and territorial governments could adequately prepare for the project.

The Norman Wells Project Co-ordination Office (1983) summarized the eventual approvals process for the Norman Wells expansion as follows:

"The Cabinet decision of July 30, 1981 respecting the Norman Wells Project was conditioned upon a two-year delay in start of construction, having taken both the EARP Panel recommendations and various views of the National Energy Board into consideration in its project approval. Two other important components of the Cabinet decision were the specific designation of the Minister of Indian Affairs and Northern Development as the federal Minister responsible for the coordination of regulation of the Norman Wells Project and of the planning of government programs in support of the Project, and the approval in principle of government expenditures to a total of \$21.4 million over the period 1981/82 - 1985/86,..." (our emphasis)

Here, several graphical elements relevant to the Northern Regulatory Review come into play:

- i) EARP panel review and recommendations
- ii) NEB review
- iii) Designation of co-ordination, regulation and planning to DIAND
- iv) Approval-in-principle for federal expenditures

DIAND discharged its responsibility for overall co-ordination and regulation of the project by establishing the Norman Wells Project Co-ordination Office.

The complexity of the role of the co-ordinator as the project developed is indicated by subsequent testimony presented by the Norman Wells Pipeline Co-ordination Office to the Beaufort Sea EARP Panel:

"The Territorial Government has a counterpart to the DIAND Project Coordinator. The two coordinators work closely together and relationships are excellent. Other key players with whom the DIAND Coordinator interacts on

virtually a daily basis are the Technical Coordinator and other staff of NEB, the IPL Project Manager, the Esso Resources Project Manager, the various officials of CEIC, DOE and DFO offices in the Region, the President and staff of the Dene Nation and the President and staff of the Metis Association, and the Minister's Community Advisory Committee." (Norman Wells Project Co-ordination Office 1983)

Significantly, one of the primary tasks of the co-ordinator's office was to address local business opportunities:

"Much of the time of the Project Coordinator, the Deputy Coordinator, the Project Advisor and staff in Ottawa has been taken up with efforts to keep abreast of the companies' performance in letting contracts in the local area. The Project Coordinator has been in constant touch with the companies on this. Cooperation in this matter by the companies has been excellent. They are aware of DIAND and community concerns that maximum effort be made to generate local business opportunities." (Norman Wells Project Co-ordination Office 1983)

The Norman Wells Project Co-ordination Office (1983) concluded that the "one-window" approach to solving problems and expediting regulatory procedures was successful. Significantly, the aspect of the office whereby it functioned within existing regulatory frameworks, and without changes in vested legislation responsibilities, was highlighted. Obviously, the success of any such office is highly dependent on co-operation received from government departments, proponents and local communities.

The success of the approach, and reasons for it, were echoed by testimony of C.G. Edge to the Senate Hearings:

"...at the practical, operating level an excellent degree of co-ordination and co-operation has been achieved among the three major players responsible for overseeing the undertaking of the first major postwar petroleum

development project north of 60 -- the expansion of the oilfields at Norman Wells and the construction of an 868-kilometre pipeline to transport the oil south to Zama, Alberta. This very good working relationship among the principal regulators involved -- the Department of Indian and Northern Affairs, the Government of the Northwest Territories, and the Board -- has been achieved on an on-going basis through the establishment in the North of co-ordinators appointed on behalf of each to maintain continuing liaison both with the companies developing the oil field and building the pipeline, and with each other. It is worth emphasizing, I think, that while this kind of mechanism has served very well in achieving its purpose, it has ultimately only been successful because the will existed among the three participants to join in a genuinely co-operative effort." (our emphasis) (Hastings 1984b, Issue 9:8)

A subsequent "mid-project evaluation" (InterGroup Consulting Economists Ltd. 1984) examined the appropriateness of authority for regulatory co-ordination delegated by DIAND to the Norman Wells Project Co-ordination Office and alternative approaches to regulatory co-ordination. They concluded that the relatively small size of the project, the delay of the original project schedule and related other factors contributed to the adequacy of regulatory authority given to the project co-ordination office. On the second issue, alternatives for regulatory co-ordination, the evaluation team concluded that the Northern Pipeline Agency (NPA) represented the strongest possible approach, while the Norman Wells Project Co-ordination Office "verges on the weakest possible approach ..."

Significantly, the study went on to conclude that:

"If changes to the approach to regulatory co-ordination were to be undertaken on future projects, it would seem most reasonable for these to move in the direction of the middle ground rather than vacillating back and forth between the two extremes. Particularly intriguing and probably the most promising is the combination of a "by exception" approach to co-ordination, with a provision for some degree of authority over regulatory activities, and a medium to high reporting level." (InterGroup Consulting Economists Ltd. 1984)

Since the Norman Wells Project Co-ordination Office dealt with significant problems of co-ordination arising from the project, and not with regulatory activities, the mid-project evaluation identified several mechanisms which could be used to deal with exceptional problems in regulatory co-ordination:

"From the least to the most powerful, and therefore conversely, from the most to the least acceptable for affected regulatory agencies, these are:

- ° voluntary mediation
- ° binding mediation
- ° non-binding arbitration
- ° binding arbitration.

Only voluntary mediation was or could be used in the Norman Wells project. A combination of voluntary mediation and binding arbitration as a last resort provides an intriguing balance of these mechanisms and their advantages and disadvantages." (InterGroup Consulting Economists Ltd. 1984)

The study further concluded that:

"Work in the area of impact management co-ordination is much less advanced than for regulatory co-ordination, yet it is likely of greater significance overall in terms of successfully implementing a major project. Of the recommendations in this study, this is one of the most general and, at the same time, it is the one most deserving of high priority and immediate attention." (InterGroup Consulting Economists Ltd. 1984)

Evidence submitted to the Beaufort Sea EARP Panel by the Government of the Northwest Territories (GNWT) indicated that earlier factors which led to the formation of the co-ordinator's office, and aspects of the initial NEB approval had negative ramifications for the GNWT:

"The National Energy Board's conditional approval of the IPL pipeline has also had several negative side effects for us. It created confusion between our role as an intervenor and our role as a regulator. This hampered cooperation between ourselves and the company as strict rules of procedure continued to apply until the leave to construct was granted, once all supplementary submissions by the proponent were approved. Secondly, it created a large and unanticipated workload for intervenors, both Government and native organizations." (Donihee 1983)

The views of the Government of the Northwest Territories on conditional approvals and regulatory approaches by NEB were further expanded in their testimony to the FEARO Panel:

"I agree with the Proponents that no new regulations or regulatory committees should be necessary. Indeed, the current framework may require some simplification to streamline it. While the proponents acknowledge the demand for staff and resources necessary to ensure environmental standards are enforced in the field, they do not mention that the trained staff and resources required for enforcement and surveillance of projects such as those proposed are simply not available at this time.

In other words, Proponent's view of government capabilities, on the ground, greatly exceeds our own. As I mentioned earlier, my department has required extra money and manpower simply to respond to developments of the scale of Norman Wells.

We recognize that as the density of industrial development increases in the North, environmental protection will require a better coordination and better organized regulatory effort and more sophisticated surveillance, enforcement and monitoring. Proposals for streamlining the regulatory effort often eliminate regional concerns. I urge the Panel, should they consider recommendations of this nature, to consider the legitimate local and regional responsibilities and concerns in such a streamlined or 'one-window' system.

A Beaufort management model which provides no access to decision-making by Northerners or the Northern government will be a dubious improvement. Our recommendation to the NEB that other regulatory models (such as the Joint State/Federal Fish and Wildlife Advisory Team (JFWAT) used in Alaska) should be investigated is still a valid one. Other planning and regulatory models for the Beaufort Sea might also be considered: land use planning commissions for instance, once a land use planning system is implemented." (our emphasis) (Donihee 1983)

The same submission from the Government of the Northwest Territories continued:

"Conditional approval of the pipeline project resulted in a long-term drain on the financial and personnel resources of our department. We were not permitted input to the terms of reference of supplementary studies by the

NEB. When the objectives of those studies were unclear, reviewers were hampered in dealing with the material. Direction from the NEB requiring IPL to respond to our comments in substantive ways was rare except for the winter clearing Environmental Protection Plan. The implications of conditional approvals should be recognized by the bodies recommending them especially when they want continuing inputs from reviewing agencies or other intervenors whose resources are limited."

"Lack of co-ordination between government agencies charged with enforcing legislation and regulations applicable to the project may result in regulatory inefficiencies, at best or at worst, gaps in the enforcement efforts. The coordination and planning of surveillance and enforcement programs for any large project should be planned early after approvals are granted. Thus approval of any large projects will create a need to review regulatory frameworks and for agencies with field staff to upgrade and train personnel to prepare them for their role in project development." (Donihee 1983)

These concerns reflect the legitimate points of regulatory deficiency, and lack of co-ordination, as experienced by the GNWT with both the NEB approval process and subsequent construction-phase activities. Another key concern highlighted by the testimony was the confusion in roles as intervenor and as regulators, when regulatory agencies are required to exert their input to project hearings or approvals through NEB hearings.

Conditional NEB approvals, although appearing to "streamline or systemize the regulatory process", may in fact result in confusion between, and within, regulatory agencies and, ultimately, hamper co-operation between developers and regulatory agencies due to the rules of procedure which apply until final leave to proceed is granted by NEB.

Also, the duplication of effort between FEARO and NEB hearings, particularly as they impact small, local communities with limited resources (both human and financial), may result in disappointment to local residents.

The Dene Nation documented several instances during the Beaufort Sea hearings where FEARO recommendations resulting from the Norman Wells hearings were not fully implemented by regulatory agencies, even though they were fully accepted by the panel and intervenors. Indeed, it is circumstances such as these that led to interventions by groups like the Dene Nation to ultimately challenge the use of authorizations as granted by DIAND.

Criticisms by Page (1981) of the Norman Wells hearing focussed on its quasi-judicial role and the acceptance of incomplete evidence.

"With the Board staff very limited in the environmental and socio-economic areas, one has to question the effectiveness of later "in-house" appraisal. Secondly, it raises a number of fundamental questions about the hearing process. Is it right for the NEB to issue approvals for a major project based upon evidence not yet received? Is public participation meaningful when important evidence crucial to cross-examination is not available? Can the Board reverse its approval if later evidence indicates that the deficiencies have not been corrected? If the NEB is truly a quasi-judicial body, then surely the decision must be delayed until all the relevant evidence has been presented and subjected to thorough cross-examination; without this, a proper assessment cannot be made. Indeed, without such processes, the credibility of the institution is eroded and the whole purpose of regulatory agencies is ignored. While it seems likely that this project can be constructed in an environmentally acceptable manner, the hearing process did not establish it. Rather the Board has made it a matter of private negotiation between itself and the applicant."

Overall, the NEB suffers from its dual role as both private advisor on energy policy and regulator of the industry. This circumstance raises special concerns where government itself is a significant shareholder of the applicant company. In this case, it is relevant to ask if the NEB can objectively appraise the merits of a project when it

has helped to create policies to maximize oil production and when the federal government is part owner and principal beneficiary of the expanded production?

The Environmental Assessment and Review Process is designed to partially overcome the weaknesses of the NEB. However, the establishment of EARP panels and public hearings are not mandatory. Admittedly, their use is growing. In the Norman Wells case, even though public hearings were held, the limited time allowed and the lack of an independent research staff made the EARP report a relatively simplistic, or philosophical, document in view of the profound regulatory questions that were raised by this project proposal.

2.2 Polaris Mine Project

Graham (1982) reviewed the history of the Polaris Mine Project, from its initial discovery of lead/zinc deposits on Little Cornwallis Island in 1960 to the conclusion of the development agreement between the Government of Canada and Cominco Ltd. in 1980. The length of time (nine years from the time of the mine feasibility study to the commencement of operation) required to secure necessary government approvals for development and to undertake other consultations, is remarkable. This reflects the variety of interests, structures, and environmental and socio-economic impact studies involved in mounting the Polaris Mine Project. The significant length of time involved also reflects the inconsistency and confusion of the regulatory regime for northern resource developments.

The main features of the Polaris Mine Project approval relevant to the Northern Regulatory Review are:

- i) the absence of an EARP review, although the EARP process was initiated during the Polaris approval period;
- ii) the public forum at the NWT Water Board and government hearings occurred **after** the signature of the memorandum for agreement on the mine's development, casting in doubt the desire for public comment on the mine development;
- iii) the modification and increasing complexity of the regulatory system over the duration of the consultation and approval process for the Polaris Mine Project;
- iv) the federal environmental assessment process was in a period of considerable flux during the nine-year gestation period of this project;
- v) the federal government was primarily concerned with regulation of the project and assurance of national benefits from the industrial venture; the Northwest Territories government was concerned mainly with employment and training for northerners and they negotiated a socio-economic agreement with Cominco Ltd.

No detailed agreements, like the one which established terms and conditions for approval of the Nanisivik mine, has been signed for the Polaris Project (Ames et al. 1980). In its place, the principals signed a letter of understanding (4 February 1980) which outlined in general terms the bases on which the project had been approved, with certain qualifications. The letter of understanding was not signed until February 1980 but the agreement was the result of protracted and intermittent negotiations between Cominco Ltd. and the federal government dating back to 1973. Agreement between the two parties had been arrived at before press announcements by both parties in November 1979.

The letter of understanding gave general approval to the project but also stated that the project must comply with existing regulatory requirements which included the Northern Inland Waters Act, the Territorial Lands Act, the Arctic Waters Pollution Prevention Act, the Ocean Dumping Control Act, the Fisheries Act and any regulations pursuant to these acts. The letter of understanding also noted that the proposed export permit for shipment of 1,000,000 m tonnes of lead/zinc concentrate to foreign smelters must be given approval by the federal Cabinet before issuance (Ames et al. 1980).

In the Polaris development, Inuit Tapirisat of Canada (ITC) and the Canadian Arctic Resources Committee (CARC) acted as critics of the approval process. Both groups complained of the limited and sporadic consultation and the lack of information about the project from the principals (industry and government). Cominco indicated that detailed technical, social, economic and environmental information would only become available through the normal regulatory process, involving hearings of the NWT Water Board. Documentation from DIAND consisted solely of a cost-benefit evaluation report of the Polaris Mine Project (Ames et al. 1980). Impacts of the proposed project were thought to be minimal and within the capability of the normal permit and licencing systems. The Federal Environmental Assessment Review Office decided against a hearing for this reason. When marine disposal of mine tailings was initially proposed, the Department of Environment (DOE) supported referral of the Polaris Mine Project to the newly instituted Federal Environmental Assessment Review Process and the proposal was submitted to the Regional Screening and Coordinating Committee (RSCC) for a DOE technical review undertaken by the Environmental Protection Service. RSCC concluded in February 1975 that a formal environmental assessment should be conducted but by October

1975 Cominco discarded the concept of marine disposal in favour of a tailings deposit in Garrow Lake. In the same month, DOE reversed its call for the proposal to go to the Federal Environmental Assessment Review Office (Ames et al. 1980).

The aura of secrecy about the project was in sharp contrast to other initiatives of the same period which called for consultation and input, for example, to the future management of the proposed ecological site at Polar Bear Pass on Bathurst Island and the policy options listed for discussion in the Lancaster Sound Regional Study Green Paper. Because of these circumstances, both ITC and CARC objected to the agreement to the Polaris Mine Project before completion of public input to suggestions in the Lancaster Sound Green Paper, before social, environmental and economic studies of the impact of the mine on the region, and before public hearings on the socio-economic and environmental impact of the mine.

Major questions identified by Graham (1982) which arose from the Polaris Mine Project case study are related to the substance and method of company and government interaction with interested parties and affected communities, and the development approval process:

- i) whether or not every northern mineral development should be subjected to comprehensive review;
- ii) how to establish a development approval process which provides for the timely consideration of socio-economic and environmental issues by all interested parties while preserving some incentive for industrial interests to pursue development; and

- iii) the rules of the game concerning consultation with communities and other interested parties over major resource developments in the central and eastern Arctic.

The experience of community consultation, undertaken in good faith by Cominco Ltd., left some community officials confused as to where community and other interests fit into the approval process. Most pressing in this regard is the need to distinguish between decision-making functions and advisory functions.

The Polaris Mine Project case study also raises some questions about government involvement in the project. These questions include: the nature of interaction between the federal and territorial governments and communities; the rules of the game which government has established to deal with companies, communities, and other interests on resource development matters; and the rules of the game government has established for companies to deal with communities. One can question, as Graham (1982) did, whether the federal government is abrogating some of its responsibility for northern development by emphasizing company-community consultation rather than direct federal consultation with communities on specific aspects of proposed developments? Should community consultation involve more joint decision-making regarding certain aspects of resource developments? How can governments more accurately communicate their expectations of community involvement in the development process?

When contrasted with the Nanisivik case, the Polaris Mine Project case study also points to some of the strengths and weaknesses of government's attempts to control development through direct participation, in contrast to control through the regulatory process.

2.3 The Incomparability of Case Studies

The preceding subsections focus specifically on regulatory features of the Norman Wells Project and the Polaris Mine Project. The inferences drawn in Sections 2.1 and 2.2 are not a substitute for more detailed case studies that could be undertaken for these two projects. Our brief analyses did, however, emphasize the difficulty of comparing different case studies and the futility of trying to draw from any one case study conclusions that would have widespread application.

The nature of individual projects is extremely variable, in terms of timing, duration and geographic configuration (discrete location versus linear projects); the availability of information on regulatory approaches also varies from project to project. Lastly, there has been a considerable array of approaches used for regulation of northern projects, ranging from those with contractual agreements to those that rely on discretionary regulatory decisions during the life of a project. For all of these reasons, it is virtually impossible to draw conclusions of general application on the basis of case study comparisons.

In our opinion, additional detailed case study analyses would have only limited applications for the Northern Regulatory Review. The difficulty of comparing individual case studies, the differences in the approaches and intent of a variety of researchers, and the distinctive natures of widely-differing projects can act only as guides to the development of new policies or approaches.

We are of the opinion that a more detailed case study of northern development projects would not yield many additional insights into the regulatory process beyond the points that

are already identified by the analyses and quotations of Section 2.1. Although there is much less public documentation of the events surrounding approval of other projects, such as the Polaris Mine, we think that for this example, too, the key regulatory features are already identified in Section 2.2.

3. REGULATORS, APPROVALS AND CONSEQUENCES

The confusion caused by overlapping regulatory mandates is evident from many of the quotations in Attachment 2. The legislation and the administering agencies that contribute to this confusing array are listed in Attachment 3. Somewhat surprisingly, however, the large list of acts and ordinances pertaining to northern resource management (Attachment 3) does not exclude the possibility of significant legislative and regulatory gaps. There continues to be active research in analyses of legislative gaps, as exemplified by the recent work by Rueggeberg and Thompson (1984). Table 1 is a selected set of examples to indicate that some analysts consider that there are still significant regulatory and administrative shortcomings in northern Canada's regulatory framework.

The administrative part of this question is particularly relevant today in view of the ever-increasing desire for territorial governments to strengthen their involvement in regulatory matters. Active research is focussing on legal and administrative questions such as: the degree to which territorial governments can become involved in the administration of federal legislation; the degree to which agencies of territorial governments can adopt guidelines developed under federal legislation, in the way that provincial agencies do; and the potential role of memoranda of understanding in increasing the participation of territorial governments in the administration of federal legislation. Research on such questions will continue whether or not similar research is addressed by the Northern Regulatory Review. We recommend that the remaining work under the Northern Regulatory Review be structured to contribute directly to better resolution of administrative responsibility for federal legislation.

TABLE 1
SELECTED EXAMPLES OF GAPS IN NORTHERN CANADA'S REGULATORY FRAMEWORK

1. Territorial Lands Act & Land-Use Regulations
 - Important characteristics of the stated goals of the regulations are not defined; for example, "ecological balance" references are undefined.
 - Protective measures are left largely to be defined in licences issued by the engineer and administrative staff.
 - Number and training of land use inspectors inadequate and not clearly linked to environmental managers or long-term habitat requirements.
 - Protection biased toward surface and physical features.
 - Land use advisory committees are non-legislated and have an advisory status only. This weakens their influence and the quality of input from associated government departments represented on advisory committees.
2. NWT Wildlife Ordinance:
 - No direct control over land use activities where federal lands are involved. The Lands Act overlaps significantly with the ordinance and, therefore, this tends to hinder comprehensive protection of wildlife habitat.
3. Canada Mining Regulations :
 - Elements for compensation in restoration or rehabilitation of disturbed habitat are lacking.
4. Yukon Quartz Mining Act:
 - (as above)
5. Northern Inland Waters Act:
 - Lacks a long-term planning process. The water controller's role of issuing an authorization for water use without a licence (recently ruled as illegal) points out other past deficiencies in the application of the act in the Northwest Territories and Yukon.
6. Canadian Wildlife Act:
 - Research provisions contained in the act are at the discretion of cabinet or the appropriate federal minister.
7. Canada Water Act:
 - (as above)
 - No regulations promulgated.

In addition to the administrative questions raised above, high priority topics for investigation by the Northern Regulatory Review are: approval-in-principle; potential conflicts between the work of NEB and FEARO; and potential conflicts between federal policies and policies developed by the government of the Northwest Territories in relation to Development Impact Zones. The subsections below briefly review the background to these topics.

3.1 Regulatory Competition and Overlap

Case studies carried out by the Science Council of Canada (Keith et al. 1976) focussed on the independence of regulatory bodies. They noted that the National Energy Board had, then, "no independent data gathering ability and has tended to rely on industry data for making its decisions". Although this deficiency has been addressed, insofar as non-renewable resources and engineering questions are concerned, it remains largely true for environmental and socio-economic concerns. The latter have assumed an increased importance in regulatory hearings before the Board, due to their assertion to probe such questions as part of their overall regulatory process.

The Science Council of Canada (1977) enlarged on the earlier (1976) findings in which it reviewed six projects in the North. It was noted that:

- "1. There has been a tendency for the interests of the major actors (i.e.) government and industry to override the interests of the other actors
2. Northern residents have tended to be excluded from the assessment system
3. Environmental issues have tended to be addressed only after the project was agreed upon."

These findings still have relevance for existing regulatory structures in the North, although significant advances have been made by government to enhance consultation with northerners (i.e.) recent FEARO Beaufort Sea Hearings. The latter have, nonetheless, highlighted the significant weight of regulatory processes in the Canadian North, both in terms of their speed of "delivery" of findings and in their capacity to involve local peoples in the decision-making process.

Earlier conflicts were highlighted by Usher and Beakhust (1973) when they concluded that:

"....conservation legislation should not be under the sole control of a government department whose major and legitimate interest is the promotion of northern resource development. In the interim, if DIAND continue to administer the Regulations (lands), then their enforcement should be entrusted to a separate and independent agency. One immediate solution would be to transfer the NWL + FS to the DOE."

They further concluded that:

"A longer term and far superior solution would be to make the regulatory system the responsibility of an independent agency composed of government representatives (not just DIAND), industry, northern communities and native organizations, and environmentalists. Government and industry representation combined should not exceed 50%. This agency would be responsible for administering the regulatory system and the hiring, training, etc. of field staff.

In the event of a land settlement in which native people are able to assume full or substantial control over the use made of their lands, they might wish to set up their own regulatory and enforcement system, using outside technical assistance and advice as required. In the main, however, our recommendations are for the short term future (ie. the next few months to perhaps two or three years), in which it is assumed that this will not happen."

These recommendations, made over a decade ago, point out the length over which these issues have been debated and the continuing lack of resolution.

The debate over northern roles and regulatory responsibilities has been further amplified by a recent Discussion Paper on Environment Canada and the North (Environment Canada 1983).

In that discussion paper the department notes:

"The government-wide coordination role assigned to DOE is analogous in some respects to DIAND's coordination function. Whereas DIAND coordinates all federal activities in the North, including resource and environmental management, DOE coordinates federal environmental affairs throughout the country, including the North. In its capacity as the federal government's environmental conscience and coordinator, Environment Canada is responsible for providing DIAND with policy and program advice and direction on all aspects of environmental quality preservation in the North." (Environment Canada 1983)."

As is also discussed below, the confusion over both regulatory mandates and departmental pre-eminence, has led to debate over conflict of interest in regulatory vs. development activities (Usher and Beakhust 1973) and the role of northerners in the regulatory process (Science Council of Canada 1977). Clearly, if the past is a good indicator, these conflicts will continue within the existing regulatory structures and may, indeed, intensify as land claim settlements are reached, or as newer community-based agencies evolve.

The paragraphs above focussed on regulatory overlap resulting from uncertainties about the respective roles of NEB and FEARO. The continuing interest in providing a legislative base for FEARO adds to the intensity of this conflict, although at present the environmental assessment and review

process continues to operate under guidelines (SOR/84-467, 22 June 1984) pursuant to the Government Organization Act (Canada Gazette, 11 July 1984).

An equally pressing question is the uncertain linkage between federal and territorial agencies. Criticisms of inter-agency competition often focus on the confusion that it creates amongst those subject to regulation (see Attachment 2), but the inefficiencies of decision-making and the overall increase in number of persons employed in the public service are other negative features of inter-agency competition. For the next phase of the Northern Regulatory Review we recommend that immediate attention be given to innovative negotiation to sort out the conflicts and overlaps inherent in DIAND's regulatory role in relation to the new NWT resource development policy (Government of the Northwest Territories 1983).

3.2 The Consequences of Approvals-in-Principle

In their recent study of environmental regulation, Hunt and Lucas (1980) carefully examined the characteristics of approvals-in-principle:

"From the point of view of industry, one of the main difficulties stems from the fact that it is never clear how much information is required before the threshold decision to proceed with a particular project will be made by government. Given the huge costs this uncertainty makes it difficult to decide whether or not to embark upon a proposal, and to predict how long an initial approval will take. There may be severe financing ramifications. This suggests that the concept of an approval in principle for major resource developments ought to be considered. This should include a reasonably clear indication as to the type and quantity of information required before a go-ahead policy decision is taken. Once the threshold decision has been made, detailed terms, conditions and approvals designed to ensure maximum environment protection could be developed as project design and implementation proceeds." (Hunt and Lucas 1980) (our emphasis).

The authors qualified their recommendation, however, by noting that:

"This first order policy decision must be understood to be conditional only. It signifies that government has no objection from the standpoint of government policy and in terms of a very basic understanding of project implications. There is always the possibility that further research will disclose clearly unacceptable environmental or socio-economic impacts. There is also a possibility that government policy may change." (our emphasis)

Hunt and Lucas (1980), cited above, noted the present severe conditions of potential change under which proponent investors must operate in the Canadian North. Conditional development approvals, subject to changes in government policy, make investment decisions progressively more difficult at each stage of development. Once development dollars are spent, however, the proponents may feel unfairly vulnerable to the vagaries of policy change. Thus, their investment in proposed developments may progressively reach the stage whereby the threshold for a decision to proceed to the full extent may be passed before approvals are in place to allow the investor to achieve optimum financial return. If such economic thresholds are reached within the frame of a conditional approval, which could be revoked or significantly modified, subsequent development options could be "compelled" by government, with the developers having few options to refuse.

Developers may consider the "approval-in-principle" approach to have inherent drawbacks for investment decisions, but there may also be advantages. Future studies on regulatory reviews should carefully consider all such ramifications and options, with a view to achieving an optimal balance for the regulator, proponent and the consumer.

Hunt and Lucas (1980) succinctly highlight a second major concern regarding the "approval-in-principle" process as currently applied in the Canadian Arctic:

"A major difficulty will be how much information is enough for approval in principle decisions. This problem, along with the legislative policy differences identified in the study suggests a major distinction between oil sands projects and Arctic projects. Approval in principle decisions for oil sands development can be made relatively easily against the clear government priority for oil sands development and the relatively good baseline scientific data. Regulatory effort can then be directed to ensuring that impacts are minimized through a combination of proponent and government efforts. However these essential conditions for an effective and credible approval in principle system are largely absent in the case of Arctic oil and gas development. The result is that significantly more onerous information requirements are likely to be imposed on applicants for Arctic approvals in principle." (our emphasis).

Notwithstanding these problems, the authors nevertheless recommended in favour of a northern approval-in-principle procedure, signifying their belief that project information requirements could be overcome. The key, however, is the fundamental values of clear government priorities for (or against) development.

In this sense, the regulatory conflicts and debate regarding approval processes are probably symptomatic. Overlap in regulatory jurisdictions could be said to have arisen from a fragmented, reactionary response to individual development proposals over time. One could argue that approval-in-principle debates have similarly arisen from reactionary responses to development proposals.

Both regulatory overlap and unclear approvals processes could be concluded to have arisen from a common, pervasive problem in the Canadian North: a lack of a clear, interpreted policy embracing all forms of development which enunciates

government priorities. Not surprisingly, "industry", government (in all its ramifications) and local communities have each grappled with their interpretation of priorities and policies for the North, and each has reached conclusions which work in their perceived best interests.

The current emphasis on "consultation", a process frequently cited as one "solution" to the regulatory-approvals maze, cannot solve the fundamental conflicts between the various, principal parties-at-interest. As Hunt and Lucas (1980) note:

"The idea however is to ensure open consideration of the project at an early stage by government and by the public. Early public participation will help to define issues and concerns and to avoid confrontation at later regulatory stages."

Consultation alone, however, is not enough with which to evolve clear policies. Conversely, one could conclude that northern planning mechanisms will also probably not solve the regulatory-approvals knot. Here, Hunt and Lucas (1980) reach a fundamental conclusion:

"Government must sort out policies in relation to classes of projects before major financial commitments are made by proponents. Such policy decisions will undoubtedly prove difficult for government." (our emphasis)

Planning processes, if directed toward classification of priorities for project proposals, instead of at the other end of the spectrum (land-use planning directed at framing long-term uses flexible enough to accommodate any number of potentially acceptable developments), would probably have a far greater chance of success and acceptability to all the parties-at-interest.

It seems reasonable that a consultation-approvals process has a greater probability for success in a context whereby development policies are clearly enunciated. Staged-approvals, local discussions and public hearings cannot frame national development policies and priorities because they, by definition, do not address them. On the other hand, national policies, once enunciated, place those discussions not only in context but in perspective to the national interest. It is in that light that alternative choices for all parties become clearer, reducing the burden of proof for both developer and regulator.

In short, existing regulatory-approvals conflicts are probably symptomatic of a "policy vacuum". Clearly, the existing "cycle of indecision" has a better chance for resolution once policies are formulated and development priorities are categorized within a northern development framework.

Further, better policy resolution would allow for a clearer definition of environmental protection priorities:

"Government policy development and resource planning initiatives will also facilitate approvals in principle by clarifying the current environment protection-resource development ambiguities that were identified in the existing regulatory framework." (Hunt and Lucas 1980) (our emphasis)

We conclude that any northern regulatory review would be incomplete unless proper acknowledgement was given to the urgent need for a concomitant examination of the Canadian northern policy development process.

3.3 The Approval-in-Principle Conflict

A major source of "regulatory conflict" and focus for recent discussions has centered on the interactions between NEB, FEARO and DIAND in assessing, approving and regulating northern development.

The Task Force on Northern Pipeline Construction Costs, known as the "Horte Report", has been carefully examined by NEB. In response to the conclusions of that report, the approach taken by the NEB has been to:

"...become increasingly engaged in pre-hearing conferences with applicants or potential applicants in an effort to provide all possible help to companies to comply with the regulatory processes. Where possible, the Board has been undertaking hearings on a phased basis in order to minimize the volume of information that must be provided initially.

Mr. Chairman, there is one particular issue that members will likely wish to explore more fully in their questions. I am referring to the suggestion in your report and that of the Horte Task Force that some form of approval-in-principle process be established in order to reduce the onerous requirements that must be met initially in the case of major energy projects." (G.C. Edge in Hastings 1984a)

Mr. Edge continued:

"As one means of attempting at least to mitigate the problem, the Board has been developing the concept of what we term an early hearing process. Through this process, the Board would seek to identify the major issues that should be addressed by the applicant and intervenors, to indicate what appeared to be particular problems that required resolution, and to outline the nature of any particular requirements for information that must be met if the applicant should decide to proceed to a full hearing of his application -- one that might still proceed on a phased basis where that was practical in the circumstances." (C.G. Edge in Hastings 1984a)

The valid concern by NEB regarding the approval-in-principle process as potentially impinging on the "fairness and impartiality of the quasi-judicial process" points out the extent of regulatory overlap in the North and hints at serious negative consequences.

Several possible options for resolution of the duplicative hearings between EARP and the NEB were documented at the Hastings Senate Hearings (p. 9:9):

"In Mr. Slader's letter to Mr. Raymond Robinson, Executive Chairman, Environmental Assessment Review Office, he indicated two possible ways of solving that problem. He said, and I quote:

(a) Exempt from EARP all projects which fall under NEB jurisdiction. The Department of the Environment would be welcome to present its evidence and views by appearing as an intervenor at the Board's hearing.

(b) Alternatively, conduct the EARP assessment especially for major projects in frontier areas sufficiently in advance of the NEB hearing so that the EARP report could be filed as part of the Board's record. The EARP report would identify the major environmental problems and preferably focus on broad principles rather than being a detailed review of the project."

These suggestions tend, however, to ignore the developing initiatives by DIAND into land-use planning in the North and the context of approvals-in-principle as currently practised.

An early timing for EARP hearings [alternative (b)] was the option, presumably, taken for the recently concluded (July 1984) Beaufort Sea review, which preceded subsequent detailed project applications. The Beaufort Sea Panel, however, has complicated this possible solution by concluding:

"...the Government of Canada ... ensure a full and effective review of proposed component projects..." (Federal Environmental Assessment Review Office 1984, p. 102)

Distance in time between early FEARO hearings and subsequent, more detailed NEB hearings may generate more problems instead of resolving conflicts. EARP Panel members may legitimately feel that "early" hearings, as proposed, may not allow for a thorough assessment of the development. Hence, a distant EARP review may actually **compel** subsequent NEB reviews. Those NEB hearings would likely be forced to consider in detail both economic, engineering and environmental/socio-economic factors. In effect, alternative (b) may result in more hearings and in more time-consuming detail than the existing system.

Alternative (a), exemption from EARP of all projects which fall under NEB jurisdiction, may similarly present long-term potential conflicts. The **criteria** under which exemption would be granted would have to be carefully examined and developed, especially in light of phased or staged approvals. An extreme example would permit developers to construct elaborate industrial facilities over a period of time sufficient to avoid significant FEARO attention. The NEB could then be faced with examination of major, **existing** facilities which have led to an "NEB response" when, for instance, pipeline facilities cross jurisdictional boundaries.

Another consideration is that the FEARO process, as evidenced by the recent Beaufort Sea Hearings, consists of a non-adversarial forum in which there is a free exchange of views, concepts and input from community residents, industry and intervenors. Should the FEARO process be precluded from major northern development reviews, the only recourse for local residents and government would be the adversarial, judicial process of the NEB hearing. Further examination and study could focus on potential avenues to incorporate the best features of the non-adversarial EARP process with the advantages of fewer hearings under an altered NEB process.

In any case, projects exempted from EARP hearings because they might fall under NEB jurisdiction assumes regulatory precedence in the North in favour of NEB. DOE, for instance, would necessarily be restricted to presenting evidence only as an intervenor at NEB hearings. Policy resolution would probably be subsequently required to determine the implications of NEB environmental and socio-economic requirements for developers, regulatory departments and local governments. In previous decisions the NEB has tended to restrict its conclusions and requirements to avoid fundamental problems of environmental research and monitoring.

It is therefore recommended that future studies focus on possible ramifications and solutions to the FEARO-NEB conflict with particular attention paid to:

- i) possible amalgamation of the best features of the NEB-FEARO processes;
- ii) examination of regulatory precedence especially as it applies to NEB requirements affecting the legitimate mandates of northern enforcement agencies (GNWT, GYT, DOE and DIAND);
- iii) examination of potential new avenues for the establishment of enhanced mechanisms for incorporation of environmental and socio-economic considerations in NEB decisions. For instance, post-development environmental and socio-economic monitoring, points which have continuously bedevilled northern developers, government regulators and communities, could be tied to rate-base costs as part of the NEB permit conditions.

This aspect, especially if EARP hearings were excluded from major developments, should be researched further. Its

significance is apparent when one realizes that any projects which might be exempted from EARP, because they fall under NEB jurisdiction, would probably be those of greater regional significance (i.e., involving export or trans-boundary considerations). Further, broad interpretations of the economic consequences of projects are, by definition, not complete unless environmental and social costs and benefits are adequately assessed and linked to the rate-base. This would provide funding for research, monitoring and enforcement, and would be proportionate to the rate and magnitude of development.

Requirements for augmenting existing monitoring and research programs associated with such developments could be advantageous to all parties by reducing regulatory redundancy and promoting a stable financial support for scientists during the project life. Alternative solutions which tend to ignore the real needs for local monitoring and the use of post-impact data would probably exacerbate, not solve, existing conflicts.

In regard to timing of approvals, Hunt and Lucas (1980) recommended that:

"...the concept of Approval in Principle be adopted for major oil and gas developments in frontier areas, with clear indication as to the point in the process at which such a decision would be made, and the type and amount of information necessary." (Hunt and Lucas 1980) (our emphasis)

Definition of the point in the process at which approvals may be granted may be the single most difficult issue for resolution, surpassing even definition and criteria for the type and amount of data necessary for those decisions. By comparison, timing of approvals is probably the single most important factor for proponent developers. A recent review by Hemstock (1984) summarized the frustrations experienced by

Gulf Canada Resources Ltd. in the Stokes Point controversy. Here, the difficult situations which evolved between the regulator (DIAND), the proponent (Gulf) and other parties (i.e. local residents, land claims negotiators and the then-ongoing FEARO Beaufort Sea review) highlighted the importance of evolving better timing for approvals.

Future studies should focus on this aspect with a view to evolving better criteria for the timing of approvals in association with data requirements. Indeed, a clearer definition of timing for approvals could greatly clarify existing regulatory roles and facilitate necessary planning for proponents.

3.4 Possible Consequences of Decentralization

Decentralization is a prominent force in the continuing evolution of the northern regulatory framework. Within DIAND, decentralization is typified by the department's commitment to community consultation using innovative methods such as that proposed for the Fort Good Hope area (June 7, 1984 letter from G.N. Faulkner and attachment entitled "Interim land procedure for Fort Good Hope and Colville Lake community area").

Industrial operations are also a part of this trend towards decentralization of decision-making. Using Fort Good Hope as the example again, there is now in place a committee structure - made up of local residents, representatives of a company undertaking a major seismic exploration program in the Fort Good Hope area, and non-governmental third-party technical specialists -- which will be the medium by which regulatory concerns will be aired and solutions negotiated.

Decentralization is also a consistent theme within the Government of the Northwest Territories, stimulated by the

vast distances, cultural differences, and the avowed political will to have a government that is close to and responsive to the people in the communities (Whittington 1984).

Although there are compelling reasons for decentralization, there are disadvantages. The basic organizational principle of unity of command is abrogated when there is a splitting in the chain of command and there is a resulting uncertainty about who is boss. There can even be impairment of the important constitutional principle of ministerial responsibility, as is the case in the NWT where there is still a reporting relationship from regional operations to non-elected officials (Whittington 1984). At the federal level, ministerial responsibility must also be considerably weakened in the case of COGLA which reports to two ministers.

The impact of decentralization upon the northern regulatory framework should be one element of the next phase of work under the Northern Regulatory Review.

4. ALTERNATIVE APPROACHES

It is not clear whether the widespread recent interest in regulatory simplification has developed because of or in spite of actual increases of government intervention in the private sector. It was noted in Section 1.1 that interests in regulatory reform in the late 1970's seemed to originate soon after the massive regulatory intervention of the Anti-Inflation Program. For northern Canada, the 1973 creation of Petro-Canada changed several features of the regulatory framework and in 1980 the National Energy Program superimposed even greater regulatory complexity. Clearly, a recognition of the need for regulatory streamlining does not automatically result in that desired goal.

The few years during which there has been widespread interest in regulatory streamlining have been marked by an impressive array of suggestions for change, some of which are cited below:

- "... there are some issues which must be faced. Drury's recommendation that DIAND's principal program responsibilities - non-renewable resource development, aboriginal claims, and northern constitutional development - should be reassigned, respectively, to ministers responsible for energy, mines and resources, native affairs, and federal-provincial relations, becomes more pertinent and pressing as time goes by." (Moore and Vanderhaden 1984).
- "Recent political events have brought us to a point where northerners and northern governments may resist a federal resource policy on the sole ground that it comes from the federal government. In fact, this has already occurred in several instances. DIAND's much heralded and welcomed land-use planning initiative has been stalled for almost two years because of federal/territorial jurisdictional disputes. Several proposals for national parks in the North are patiently awaiting the resolution of land claims. Recently the Dene Nation successfully challenged the federal government's inland water licencing procedures, leaving the North in a situation where water use is effectively unregulated. Decisive action is needed urgently to remedy this, but unilateral federal decisive action is no longer acceptable in the North." (Burnet 1984)

- "... the federal government must overcome its paranoia over the control of resource development at least to the extent of opening up the possibility of sharing resource revenues with the government and people of the north." (Moore and Vanderhaden 1984).
- "Badly needed is a set of policy objectives which are clear, meaningful and acceptable to the people of the north as well as to the Canadian public in general. It is time for the 1972 policy objectives on northern development to be reviewed, but such a review would inevitably raise fundamental political issues which the present federal government, having successfully sidetracked the Drury Report, would not want to face." (Moore and Vanderhaden 1984).
- "Readjustment of responsibilities between the "big government" in Ottawa and the government in Yellowknife." (Hamelin 1984).
- "If sound environmental protection and resource management in the North is in the national interest, as I hope everyone here would agree, then it follows directly from this that it is in the national interest to bring the process of northern political evolution to its conclusion, because this may be the only way to fill the vacuum of public authority that now exists on major questions of land and non-renewable resource management in the North." (Burnet 1984)
- "Better linkage between perception and reality would render the management of the North more responsible, more responsive and more representative." (Hamelin 1984).
- "It is safe to assume that the pressure for change in both territories will continue, and that current developments will increase that pressure. It is likely that the form of government will remain essentially consistent with the Canadian experience, and that the ultimate goal will be full provincial status." (Cotterill 1984).
- "While recognizing the national interest, it does not appear that that interest would be compromised through a positive approach to the delegation of responsibility in some areas of resource management, such as forestry, lands and water, and the sharing of power in others such as mining and oil and gas. To the extent that this contributed to a more coordinated approach and reduced the current confusion in this area, the national interest would be enhanced. Equally, in the area of resource revenue-sharing, there would appear to be little to be lost in terms of the national interest, by encouraging some mechanism whereby a portion of the revenues accruing

from resource development would flow directly to the governments closest to the people affected Progress in these two areas, while not the only areas that must be addressed, would contribute greatly to a more orderly, less acrimonious, and more effective evolution of government within the two northern territories. That is a goal which all Canadians should welcome." (Cotterill 1984).

- "I agree that the process under which frontier oil and gas exploration and development occurs can and must be improved. But I do not accept *quid pro quo* that we should limit ourselves to the rather self-serving discussion on **approvals**. An improved process may require greater rejection of applications rather than more approvals. By phrasing the question in terms of approvals, we prejudice the outcome of any discussion. ... Therefore, before dealing with how we might address the problems facing frontier oil and gas development, I feel we must restate the objective of the discussion. The issue cannot be restricted to approvals, and if we are to talk in pragmatic terms, it is not streamlining either. Rather the issue is: How can the planning, timeliness, and methodology of the review and decision-making process for frontier oil and gas development be made more responsive?" (Gamble 1981)
- "First, there is a need for more legislation -- not less. I suggest that we need an environmental protection act to sort out the role and responsibilities of the federal government on all environmental matters. We also need to abolish the current *ad hoc* EARP and build in its place, from a new and solid legislative footing, a federal planning and review process that is rigorous, sensible, and just. Both these things must be tailored to legislative changes that would see significant responsibilities transferred to native people through the resolution of aboriginal rights, and to the representative governments of the territories through constitutional development." (Gamble 1981)
- "... there is little likelihood that extensive deregulation in the sense of the entire energy sector or even a large portion of it being regulated only by market forces, will occur. It can only be expected that the National Energy Board and other agencies in the field will allow more efficient government by removing unnecessary, costly, inefficient, and repetitious regulations and procedures." (Hendry 1983)

- "Recently, much concern has been expressed about the political and functional relationships between administrative agencies, and about the amount of control over these agencies that is appropriate for the executive branch of government to exercise." (Hendry 1983)
- "Over the past decade we have already seen fundamental changes in the regulatory process as more and more parties seek, quite legitimately it needs to be underlined, to protect their interests and secure their goals through such a process. As W.T. Stanbury has noted, there has emerged a general demand for "no regulation without representation". As regulatory agencies, supported on occasion by the courts and elected authorities, have positively responded to such a demand by among other things liberalizing the right to appear, by holding hearings in affected communities and by providing funds to support appearances, the adversarial hearing process has increasingly become 'a surrogate political process to ensure the fair representation of a wide range of affected interests in the process of administrative decision'." (Shultz 1983)
- "The failures of this period [1972 to 1982] led to a consensus that the federal government must devise more specific resource management policies that could determine the scope of, and conditions for, the use of northern lands and resources before specific demands arose. Industry talked about needing to know the "rules of the game" before investing millions of dollars preparing for major projects." (Burnet 1984)
- "... if resource management debates during the seventies centered on the reactive efforts of environmentalists and native groups trying to thwart or delay specific development projects, we are now in a situation where the federal government is trying to take the first steps towards such "pro-active" measures as land-use planning policies, parks and wildlife policies, wildlife management policies, ocean management policies, and inland water management policies. The federal government is no longer standing back and trying to assess the merits of development initiatives in a vacuum. It is moving towards the active management and administration of northern lands and resources. It is important to understand that policies such as these will necessitate more government activity. The public management of lands and resources means government will be called upon increasingly to monitor, assess, licence, and plan the use of these vast territories in order to avoid the kind of conflicts we have witnessed during the past few years. ... But in the 1980's, questions about "how" we are going to manage northern resources have been superseded by the question of "who" is going to do it." (Burnet 1984)

- "We do need a regulatory process but we must curb the unproductive aspects of human behaviour that tend to turn such processes into the kind of morass that the DIAND Beaufort Chart illustrates. There are three main requirements:
 - A. Determine and Proclaim Policy Objectives**
The federal government must take a position somewhere on the scale between total conservation (i.e. preservation) and back-to-the-land policies at one extreme and no-holds-barred development at the other. Without clarification of objectives the players in this particular game will be running in all directions;
 - B. Establish Title to the Land and Sea**
Ownership of surface, subsurface, access and renewable resource exploitation rights must be known before any process can work. In other words we have to know who is playing in the game and at which positions;
 - C. Impose Coordination on Government Agencies**
Departments must be harnessed to implement the policy set out under A. The coordinating group must have authority to act because it will meet resistance, as departmental submissions to the Senate Committee show. Departments tend to see themselves as responsible only for the implementation of part of government policy and legislation rather than as part of the public service responsible for implementation of all government policy. If you want a specific example consider DOE's "advocacy" policy. This tendency to fragmentation must be curbed. To complete our game analogy the referees must all use the same rule book." (Yarranton 1982)
- "... public confidence would be increased by an open assessment process involving a two-stage hearing. Alternative proposals would be evaluated in the first stage. Once project justification is established, assessments would be designed for the purpose of predicting the needs for impact management, mitigation and compensation of the approved project. No particular advantages seem to be served by a "single window" management agency except in a coordinating role to ensure that proponent and government responsibilities are met." (Thompson et al. 1981)
- "... we are arguing for three important innovations in the assessment and review procedures of governments as they are currently practised in Canada. First, we point to the opportunity which the Ministers, advised by the Energy Project Coordinating Committee, have through the screening procedure and the drafting of terms of reference to identify all important issues, indicating

their respective priorities, and to accomplish coordination of all elements of the approval process, including public hearings and the issue of permits and licences. Second, we urge a recognition that the planning of government departments in response to perceived project impacts should be assessed and reviewed along with the proponent's application. Departments should actively participate in public hearings where their presence will assist in identifying what can be done to manage impacts and where responsibilities for mitigation and compensation should lie. Third, we argue that the potential for effective post-approval monitoring and management of a project can best be realized through the functioning of the approval process." (Thompson et al. 1981)

- "Many statutes confer regulatory powers on ministers who in turn delegate, in most instances, the responsibilities to their officials. It is important to investigate, again in depth, how these powers are exercised and their effects. Are the officials involved inordinate risk averters, as one would expect? Does the system now in effect forestall innovation? The problems are particularly acute where a high science-technology component is involved in regulation." (Hartle 1979)
- "... recent developments within the public sector 'may well turn on its head the master-to-servant relationship which has been the essence of responsible government and of the liberal democratic state'. Some would argue that this has already occurred in the regulatory system and that elected authorities have lost effective political control over independent regulatory agencies. There is much merit in such a conclusion. We have attempted to account for this development and our analysis has emphasized the importance of transferring a political role -- an adjustive role -- combined with a political function -- planning -- to the regulatory agencies." (Schultz 1982)

Our main conclusion from the quotations listed above is that northern regulatory reform is inseparably linked with northern policy development and we recommend that this be recognized in the remaining work of the Northern Regulatory Review. It is also evident that there are many innovative suggestions for change, some of which are elaborated upon in the subsections below.

4.1 Phased Approval Processes

Phased approval processes, sometimes involving hearings of two or more stages, have been analyzed in considerable detail from the point of view of fairness. The basic elements of a fair assessment procedure include: openness, no bias or predecision, flexibility and broad scope for proceedings, making policy assumptions explicit, addressing procedural fairness directly, providing costs or funding to public participants, placing time limits on proceedings, and requiring written decisions by assessment agencies (Case et al. 1983).

Some researchers have argued in favour of phased hearings on the grounds that public confidence is increased by an open assessment process that involves two distinct phases (Thompson et al. 1981). These authors suggested an approach in which alternative proposals would be evaluated in the first stage. Once project justification is established, assessments would be designed for the purpose of predicting the needs for impact management, mitigation and compensation of the approved project. Other researchers have suggested an approach in two-phase hearings in which matters of policy are handled in the first phase and the proposed project is examined in the second (Finkle and Lucas 1983). However, there is skepticism about the effectiveness and even the fairness of such a two-stage process. First, the policy/project division is difficult to make in practice. Repetition at each hearing and additional time spent by participants may be a result. At the first stage, project design may be so preliminary that assessment is difficult or impossible, and when design is finalized at a later stage, participants may be procedurally constrained from raising policy issues that were not apparent at the preliminary design stage. Furthermore there is a natural reluctance on the part of government to release policy

decisions to an environmental assessment agency. If the agency lacks at least strong policy influence, the public credibility of first stage hearings tends to be seriously compromised (Finkle and Lucas 1983).

An integral part of phased approval processes is the imposition of time limits on the various stages of the process. Time limits are viewed positively insofar as they reduce the burden of cost and time commitments for those participating in the approvals process. However, inflexible enforcement of time limits can arouse feelings of unfair treatment of participants (Finkle and Lucas 1983).

The process of evolution of the "staged approval" process for industrial development in the north was continued with the recent Beaufort Sea FEARO Panel Report (Federal Environmental Assessment Review Office 1984). The report, which went so far as to include a sub-title "Beaufort Sea Development - A Phased Approach", set out two objectives:

"...northerners, developers and governments must ensure:

- that northerners are able to manage the effects of changes and to derive long-term benefits from developments; and
- that the degree of risk to renewable resources from oil and gas production and transportation activities will be acceptable to them.

The Panel has determined that in order to satisfy these objectives a "phased approach" to hydrocarbon production and transportation is needed. This approach will see a number of "small" projects following each other rather than one large-scale development project." (Federal Environmental Assessment Review Office 1984)

A "phased approach", recommended by the Panel is, in effect, a "staged-approval" process with a strong emphasis on local consultation and direction of benefits to northern residents:

"The Panel concludes that a small-diameter (e.g. 400 mm), buried pipeline would be the most acceptable alternative for transporting oil from the Beaufort Sea region because the drilling and production activities that support such a pipeline would provide benefits to the North and would have minimal negative impacts. There is also a wide consensus among federal and territorial government departments that a small-diameter pipeline could be built in an environmentally acceptable manner, given appropriate regulations, regulatory enforcement and monitoring procedures." (Federal Environmental Assessment Review Office 1984)

At the same time, the Panel recognized that "phased-approaches" to alternative, or complementary, resource development projects allow for considerable flexibility at both the project design and implementation stages:

"Although the Panel prefers that the phased approach begin with a small-diameter pipeline, it is aware that certain factors may make a phased approach beginning with tanker transportation, the favoured mode of oil transport. The Panel believes that oil-carrying tankers could be allowed initially on a demonstration scale (two tankers only), subject to a careful, step-by-step testing of the tankers and their operations." (Federal Environmental Assessment Review Office 1984)

As such, the Beaufort EARP Panel recommended for an extension of the traditional boundaries of the staged approval process from one in which regulatory approvals are focussed on "pre-development" stages to a significantly expanded series of approvals, each of which precedes the implementation of a succession of "small" projects which eventually become a large-scale, regional "megaproject". While the staged approval process has been generally regarded as consisting of two primary phases (a "policy" hearing followed by hearings which focus on the proposal), the Beaufort EARP Panel's report, in effect, expands the process to potentially allow for a series of reviews, or hearings, throughout the lifetime of the "phased" development.

While only conjecture, because the Panel's conclusions are only advisory in nature and not binding, the expansion of a staged approval process has direct ramifications for both government and industry. The impact, for instance, of a series of "mini-approvals" within the scope of earlier "approvals-in-principle" could be very significant. Indeed, this single aspect requires more study from both a legal and regulatory viewpoint. Further, complex interactions between DIAND, GNWT, Yukon Government, other federal agencies (DOE, MOT, COGLA) and local communities, or DIZ groups, could develop as a result of phased approval processes.

As is clearly evidenced by the history of hydrocarbon and mineral exploitation in the Arctic, economic and political priorities change with time. These changes in economics or policies may have direct consequences for project developments and, therefore, local residents and regional or national governments. Staged regulatory hearings or approvals strongly influence expectations for developers and local residents, while, in effect, reducing the "approved development horizon" for proponents. Although this may limit the liability to negative impacts from megaprojects which may potentially affect northern communities it, at the same time, may entail enhanced liability to economic change and northern investment.

An expanded, phased approvals process also has implications for local communities as this approach may influence larger, regulatory processes. It is conceivable that, in the course of a series of staged approvals for a major development, northern communities could strongly support approvals (due to direct, local benefits) in opposition to more distant, regional objections raised by federal or territorial agencies in regard to wildlife populations, for

instance. In such cases, difficult questions as to which agency, regulatory group or local community has the "final say" would need to be resolved in what could easily become political, fractious forums.

All these potential aspects would have to be carefully addressed by any detailed northern regulatory review.

4.2 Single-Window Agencies

The concept of a "single-window" government agency for northern jurisdiction and regulation probably derives largely from early attempts at co-ordination. It is certainly not a new concept, as revealed by the diverse approach to "single window" authority during the past 30 years (Table 2). After World War II, when priorities for health care among scattered Inuit communities and concerns for national defence were dominant concerns in the North, the formation of the Associate Committee on Northern Development (ACND) sufficed to ensure proper and timely co-ordination for northern programs, at a national and international level. ACND was, in a sense, the first "single-window agency" in northern Canada.

The ACND, in conjunction with the offices of the Territorial Commissioners, was a unique example of senior government officials co-operating to administer one of the largest geographic (and near-colonial) entities in the world. Administrative functions of the ACND were progressively subsumed by DIAND, a trend which culminated with the creation of the Northern Inland Waters Act and the Arctic Waters Pollution Prevention Act. The latter legislation was a political response to international attention resulting from the S.S. Manhattan attempt to transport oil from northern

TABLE 2. EVOLUTIONARY STEPS IN THE DEVELOPMENT OF "SINGLE-WINDOW" APPROACHES TO GOVERNMENT IN THE CANADIAN ARCTIC.

FUNCTION AND NATURE OF OFFICE	AGENCY	TIMING	CHARACTERISTICS AND FOCUS	SOURCE OF DEVELOPMENT PRESSURE	RESPONSE	PROBLEMS
Single window #1 (Policy)	Office of Commissioner	1960's (Tuktoo much earlier)	Broad responsibilities but little fiscal or legislative clout	Gold rush & later developments	Broad responsibilities	Reported as a "colonial" office to Ottawa
Single window #2 (Policy)	ACND	1960's-early 1970's	Senior government department representatives; very broad focus	Inuit resettlement; BEV-line construction and related National defence concerns	Regular decision-making meetings held by senior civil servants	Fell into disuse
Single window #3 (Administration)	DIAND	1966-1971	Authority focussed on DIAND N.Q. staff	S.S. Manhattan attempts to traverse W.W. Passage; mining developments	N.T.U.A. & regulations promulgated; A.W.P.A. & regulations promulgated	Jurisdictional conflicts with DOE/DMT/GYT
Single Window #3 (Review & Advice)	MacKenzie Valley Pipeline Inquiry	1975-1977	Broad ramifications but focussed exclusively on CAGPL pipeline proposal	Proposed gas pipeline	Comprehensive hearings and 2-volume report; suggested creation of Northern Pipeline Agency	Expensive and time-consuming approach to decision-making
Single window #4 (Regulation)	Northern Pipeline Agency	1976-1984	Focussed entirely on Foothills Pipeline Proposal	Proposed gas pipeline	Regulatory agency & personnel with clear, specific mandate	Vulnerable to changes in economics and project scope; Disbanded in 1984
Single Window #5 (Review & Advice)	PEARO for Arctic Pilot Project	1980	Focussed exclusively on APP Proposal	Arctic Pilot Project	Recommended establishment of a PDT control authority for shipping with "appropriate" environmental regulations	Project stopped after NES review; regulatory overlaps
Single window #6 (Co-ordination)	a. DIAND Beaufort Sea Office	1981	Focussed on Beaufort Sea development	Beaufort Sea oil production	DIAND established a central co-ordination office based in Inuvik	Effectively disbanded
	b. PEARO (Norman Wells)	1981	Focussed exclusively on Norman Wells oil field and pipeline proposal	Norman Wells oilfield & pipeline	Led to establishment of a Norman Wells co-ordinators office in Norman Wells; small staff with co-ordinator	Non-senior level co-ordinator, established relatively late in development; regulatory overlaps
Single window #7 (Administration & Regulation)	COGLA	1980	An integral part of the National Energy Program	Hydrocarbon exploration and development on federal lands	COGLA responsible for engineering & environmental requirements re: permitting	Ongoing programs in process; regulatory overlaps with NES/DOE/DIAND
Single window #8 (Administration)	DMT	1983	Broad focus on all DMT resource development issues	All forms of exploration & development on DMT lands	Created development impact zone (DIZ) groups	Ongoing regulatory overlaps; focus of window has been reduced to community level
Single window #9 (Review & Advice)	PEARO for Beaufort Sea development	1984	Broadly focussed on all development proposals for hydrocarbon development & transport from Beaufort Sea region	Beaufort Sea hydrocarbon production & transport	Recommended Beaufort Sea co-ordinators office be expanded, with co-ordinator at rank of a federal Deputy Minister, to co-ordinate development and transportation but with no regulatory responsibilities; co-ordinator to be a facilitator, ombudsman and advisor	Reduced focus to Beaufort Sea region

Alaska through Lancaster Sound. The legal ramifications of that failed experiment in hydrocarbon transportation continue today, and a large body of international law regarding the right-of-free-passage has been developed regarding the Canadian Arctic Archipelago.

The next key step in the evolution of northern jurisdictional concerns arose as a consequence of the Canadian Arctic Pipeline Ltd. (CAGPL) application to construct and operate a gas pipeline up the Mackenzie Valley to southern markets. The Mackenzie Valley Pipeline Inquiry examined not only the proposal, and impacts resulting from it, but also made far-reaching recommendations of regulation and enforcement for the proposal. Legislation establishing the Northern Pipeline Agency (NPA) was, indeed, passed shortly after the receipt of the final Berger report.

In effect, the NPA became yet another "single-window" agency (Yarranton 1982) whose focus was, nonetheless, highly centered on the project at hand. The vulnerability of such an intensely focussed regulatory agency established by statute was later demonstrated by the collapse of the Foothills Pipeline proposal and the subsequent, effective disbanding of the NPA throughout 1983-84.

The concept, nevertheless, expressed by Berger (1977) that "the regulatory authority will have to be accessible and responsive to all institutions and groups that have an interest in the pipeline -- departments of government, communities, public interest groups and....native people" was captured by the creation of the NPA. Moreover, Berger foresaw the role of this "single-window" agency extending far beyond

the construction phase of the project as proposed:

"Such an Agency will be essential, even following a settlement of native claims and a restructuring of northern government."

In summary, the Mackenzie Valley Pipeline Inquiry and the subsequent creation of the NPA represented a significant turning point not only in the evolution of "single-window" approaches to enforcement and regulation but also in the attention that Canadians gave to regulation in the North.

In quick succession, further development pressure from the proposals for arctic marine energy transportation (Arctic Pilot Project) and land-based oil transportation (Norman Wells project) modes quickly re-focussed attention on northern regulation. In the former, the EARP Panel once again opted for a "control authority administered by MOT with a mien to having an integrated routing system in place to deal with future ship traffic". The Panel further developed the concept by recommending that DOE and DFO "establish an advisory committee which would recommend and approve studies necessary to allow biological information to be effectively integrated into the route selection process" (Federal Environmental Assessment Review Office 1980).

The subsequent Norman Wells Pipeline report (Federal Environmental Assessment Review Office 1981) also further developed the "single-window" concept. As in the report of the Mackenzie Valley Pipeline Inquiry, the Panel identified significant deficiencies noting that: "....important deficiencies in the proponents' planning and in the preparedness of government need to be rectified." A project delay until "1982 at the earliest" was set out "....in order that these deficiencies can be dealt with" (Federal Environmental Assessment Review Office 1981).

Further, two primary recommendations concerning "government preparedness" were made:

"1. DIAND should take the lead in preparing a preliminary land use plan for the Mackenzie Valley to provide a framework in which the proposed project can be planned and evaluated.

2. The GNWT should move promptly to insure that adequate staff and resources are available to accommodate the Norman Wells project. The coordination of Territorial and Federal Government programs should be assured." (Federal Environmental Assessment Review Office 1981)

These recommendations led to the formation of a Norman Wells co-ordinator, based at the site, with responsibilities for the co-ordination of both industry and government programs.

The subsequent report by Hastings (1983) further delved into the concepts of "single-window agencies" and "approvals-in-principle".

Hastings recommended:

"That the appointment of a federal co-ordinator to each major energy project, responsible to a designated Minister, be tried on a pilot basis to test its suitability. After a designated period of time has passed, the mechanism should be reviewed and a decision made on its suitability."

The recommendation was based on Senate Committee's analysis of attempts to focus, or co-ordinate, government activities when faced with significant development proposals:

"One of the more recent attempts to create an office that would act as a focal point for government activities was the Beaufort Sea Office (DIAND), established in 1981. The Office was intended as a link with industry in its Beaufort Sea activities to facilitate the flow of information between industry and government. While it had this responsibility, it did not appear to possess the authority to carry out these functions. After producing

a detailed useful report on government's role in Beaufort Sea development, it was disbanded in the fall of 1982. This was a novel attempt to provide a one-window approach within a department rather than establishing an outside agency. Without a defined legislative or administrative mandate to provide one window, however, the Committee believes that the chances of success of this type of approach are severely reduced. It would nevertheless seem advisable to assist sponsors and their regulators through the regulatory maze.

To minimize this problem at the pre-cabinet decision stage and where warranted by public interest considerations, a senior federal co-ordinator/expeditor could be appointed, responsible to an appropriate minister, to assist the project sponsors in meeting government information requirements and to co-ordinate the pre-decision activities of federal departments and agencies. As required, a small number of experienced personnel from involved departments and agencies could be seconded to facilitate the co-ordination of and response to federal regulatory requirements. Standardized assessment procedures geared to the significance of the project should be developed to ensure that consistent assessments are carried out." (Hastings 1983)

The formulation of the Resource Development Policy in the Northwest Territories (Government of the Northwest Territories 1983) led to the new, but parallel, evolution of the Development Impact Zone (DIZ) groups, associated chiefly with Beaufort Sea development proposals. Here, the concept of a "single-window" was further narrowed by the following definition:

"....a zone is defined as a community, a group of communities or a geographic area that is experiencing or is about to experience extraordinary impacts as a result of resource development." (Government of the Northwest Territories 1983).

The most recent step in the evolution of the "single-window" approach was the recommendation by the Beaufort Sea EARP Panel:

"The Panel recommends that the role of the Beaufort Sea Coordinator's Office be expanded to make it the coordinating office not only among the community-based

Development Impact Zone Group and governments, but also among industry and governments." (Federal Environmental Assessment Review Office 1984)

The Panel report contained several elements which significantly expanded both the focus and implementation of such an office:

- ° "this office should be the principle coordinating mechanism for Beaufort Sea-Mackenzie Delta hydrocarbon production and transportation projects;
- ° the office should remain in Inuvik;
- ° as the coordinator should have direct access to the deputy ministers of the federal and territorial government departments, as well as to industry and community groups, in order to expedite the solution of emerging problems, the coordinator should have the rank of a federal deputy minister, and be appointed by the Privy Council after consultation with the territorial governments;
- ° the coordinator should have the roles of facilitator, ombudsman and advisor but should not have regulatory responsibilities;
- ° the timing of this appointment should allow the coordinator time to implement effective monitoring mechanisms but, in any event, should be not later than the date of the approval of the first hydrocarbon production or transportation project in the Beaufort Sea-Mackenzie Delta area;
- ° the coordinator's office should include staff seconded to the coordinator from other federal and territorial departments as a means of improving communications and understanding between the coordinating office and the regulators; and
- ° the coordinator, in addition to responding to the concerns of the DIZ Group, should chair a management committee whose role would be to identify potential interjurisdictional disputes and resolve them before they develop. The committee would include senior on-site representatives of industry, the Regional Director of the Inuvik Region of the GNWT, the senior officials of DIAND, DFO, DOT, and DOE who reside in the North, community administrators from Tuktoyaktuk, Inuvik, and Aklavik, and, when matters relating to Yukon are discussed, a senior official of the Yukon Government." (Federal Environmental Assessment Review Office (1984)

Two major trends are evident. First, each successive "single-window" approach in northern Canada has had a reduced focus and scope. For example the ACND was a committee composed of senior civil servants at the Deputy Minister level with sweeping powers for implementing policy decisions. This has evolved to fragmented groups, some composed of local and territorial representatives, at the community level. The "single-window" focus has, in effect, diminished both in terms of seniority of representation, powers and scope, while the number of "windows" has significantly increased.

Second, it is clear that acts and regulations have been developed as a direct response to specific northern development proposals. One might conclude that any current distress experienced by proponent developers or government agencies in the North has been a direct result of reactionary responses to specific development proposals by government. These varied and numerous responses, have led directly to the present jumble of acts and regulations.

In essence, since there has been no overall development policy framework operative in the North, the legislative responses have necessarily been fragmented, reactionary and poorly co-ordinated. As such, current conflicts, overlaps and gaps in the regulatory environment of the Canadian North appear to be directly attributable to the process of evolution in which they have developed. There is little to suggest that the process of regulatory duplication and conflict will stop until an overall policy strategy or development framework is developed for northern Canada.

It is significant that some researchers are of the opinion that the "single-window" concept is of value only in a co-ordinating role. For example, Thompson et al. (1981)

suggested that:

"....the "single window" concept is not likely to succeed if carried beyond a purely coordinating role. Agencies will not willingly surrender their mandates. Nor should they except in extreme cases. One of our evaluative criteria is that new institutions should build on existing ones in so far as possible. An attempt to create a super agencies for a specific resource project runs counter to this precept. Further, it is likely to lead to inefficiency both in encouraging duplication of responsibility and effort and in weakening existing institutions. Instead, the goal should be to achieve coordination of the efforts of government agencies. Achieving such coordination is not a mean task. Nor is it accomplished simply by establishing inter-agency committees. Some authority is required to ensure coordination. In particular, authority is required to expedite decision-making and to resolve disagreements." (Thompson et al. 1981)

There is also a question of whether a single window or co-ordinating agency can be successful without legislative powers? Yarranton (1982) suggested that there is one way in which it could and that is by secondment from other departments of individuals carrying that power or authority with them. Such an arrangement would not require legislation to put it in place. Individuals would retain ties to the home department and its priorities but would identify with the coordinating agency and its objective of reaching practical conclusions and getting things done.

4.3 Mediation Procedures

Potentially adversarial parties are increasingly being brought together in committee form to consider matters that are otherwise left to regulatory agencies. The approach presently underway at Fort Good Hope was mentioned in an earlier section as an example of this trend. The increase in direct contact between developers and local residents can be expected to increase the need for mediation procedures.

An alternative dispute resolution mechanism used increasingly in the United States and to some degree in Canada in the last ten years is environmental mediation. The term was coined in 1974 by Cormick (1976) as a description for negotiated settlements of environmental disputes arrived at with the assistance of a mediator. In Canada, mediation has assisted in the settling of disputes among Indian bands, the federal government and provincial governments. A classic example is the northern Manitoba Hydro dispute (Mitchell 1983). It is a voluntary process in which an independent party or organization assists the disputants to define, analyze, explore and reconcile their differences. Proponents such as Baldwin (1978) and Grenville-Wood (1983) stress the following advantages of this method over the adversarial method:

- i) the parties become directly involved in negotiating and agreeing to the rules and guidelines by which they will be governed;
- ii) mediation is an alternative to lengthy and costly litigation or it may expedite all or part of the regulatory hearing process with its associated costs and possibly inhibiting quasi-judicial formality;
- iii) it increases the chances of consent agreements between affected parties and encourages an atmosphere of greater compliance with regulatory decisions.

However, certain conditions are necessary for the most optimistic outcome. Each party considers a mutually satisfactory settlement to be in its own self interest. Each party has an element of power that can be applied vis a vis the other. Each party must consider settlement to be a matter of priority and each party recognizes the need for, and is prepared to accept, reasonable compromise.

Mediation is considered by Stein (1983) as an alternative which in some cases can only be used if it is considered an adjunct to other compulsory means of dispute settlement, such as a formal hearing process, to prevent it being used as a vehicle for delay by avoiding reaching a conclusion. Several writers (Baldwin 1978, Mitchell 1983, Patton 1984 and Stein 1983) have stressed the role of the mediator to identify the real from the ostensible issues in disputes, to identify the nature of the obstacles to agreement that must be modified or removed, and to assess what accommodation by each party may be necessary to arrive at a mutually acceptable settlement. The parties may fashion any remedy they deem suitable to their needs and self-interest. In this regard, Cormick (1976) stresses that mediation is a decision-making process.

Criticism of environmental mediation by Schoenbrod (1983) stressed that environmental statutes do not permit speedy or final adjudication of disputes because they involve too many steps and leave too many hard issues unresolved. This author concluded that it is legislative bodies, more than private parties, which must strike the environmental compromises. In her examination of impediments to negotiation with a mediator, Patton (1984) cited the following problems: risk (interest-based and personal); skepticism that an opposition can ratify and abide by an agreement; formalizing of public positions so that there is no middle ground for compromise; and situations where parties want to settle but do not want to negotiate. In such cases, the power or challenge of the mediator must lie in his/her skills to bring the parties to a realization that their best interests lie in a settlement and that a settlement is indeed attainable.

In examples of negotiated settlements from recent Canadian experience, Haussmann (1983) makes the point that parties can come to negotiable agreements, and that regulatory

authorities will accomodate such negotiated settlements, giving them the force of law by incorporating the terms into regulatory decisions or orders. Similar achievements are just as possible with mediated disputes, particularly with skilled, conversant and dedicated mediators. The procedure is described by Haussmann (1983) thus:

"The impetus for mediation in these cases originates with the regulatory bodies themselves, and the structure of the decision-making process. If the parties do not participate in a good-faith negotiating effort overseen by the regulatory agency, their credibility is damaged in the eyes of the very same agency to which they must turn for a resolution if the negotiating fails. It is in their interest, therefore, to make every effort to successfully negotiate a settlement.

The same approach can apply in environmental disputes. In such a scenario, a mediator might be appointed by the Minister or the relevant regulatory body, to meet with parties who have made application for a hearing, and to investigate the possibilities for mediation. In this fashion, disputes amenable to mediation could be identified before lengthy hearings are initiated. Even if all the issues are not successfully resolved through negotiation, a partial agreement could be submitted for adoption by the hearing board, leaving the remaining issues to be adjudicated directly to the board. Many days of expensive hearing time could be saved, and a more participatory settlement achieved."

Haussmann also identified a specific problem as regards government:

"Government authorities must provide reasonable assurances that they will co-operate with the mediation process. It is quite conceivable that regulatory agencies will not wish to participate in the mediation process, for fear of compromising their statutory obligations. In such instances, the mediator will have to maintain close communication with government agencies to ensure their requirements are met by any agreement. It is particularly helpful here to have the support of the senior government politician behind the mediation effort.

Hausmann also proposed a solution to the problems of a funding mechanism for the service of mediation and suggested three viable solutions: funds from foundations, in the short-term, to establish an environmental mediation institute for the training of mediators; and, for the long-term, funds from a legislated environmental mediation program similar to that of ombudsmen or by funds made available to regulatory agencies, provided the source of funding is strictly independent of any party to the dispute. Already funding from the Donner Foundation has been received to enable the Environmental Mediation Institute to continue its research in Canada, and conferences and workshops are examining issues and ways to mediate disputes. For example, the upcoming Second National Conference on Environmental Dispute Resolution to be held October 1 and 2, 1984, in Washington, D.C. includes in its agenda such topics as the Roles of Agency Staff and Independent Mediators in Resolving Public Policy Disputes and Resolving Conflicts through the Land-use Planning Process.

For the Northern Regulatory Review, environmental mediation offers one element in a battery of potential problem-solving procedures available at an early stage in a dispute or available as facilitating procedures at prescribed stages before and during regulatory hearings.

4.4 Contractual Versus Regulatory Models

Government and industry have begun to carefully evaluate the advantages of contractual arrangements as an alternative to regulatory processes in resource development. It is thought that the management of social and environmental impacts may be significantly enhanced through negotiated contracts. Thompson (1984) cited one recent example between Dome Petroleum Ltd. and a native band council at Port Simpson, British Columbia:

"This agreement was filed with the National Energy Board and is to be made a condition of the Certificate of Public Convenience and Necessity to be issued by the Board for Dome's proposed liquid natural gas facility. It deals with all aspects of the project that must be regulated in order to meet the Band Council's concerns about safety, social welfare, and environmental impacts. Dome undertakes to establish an ongoing Liaison/Monitoring Committee to supervise compliance with the terms of agreement and to submit disputes about future mitigation and compensation measures to this Committee for final resolution."

This approach has been furthered through the use of "Canada benefits" packages negotiated by petroleum companies with the Government of Canada as part of exploration agreements for offshore and northern acreages under the Canada Oil and Gas Act.

More recently, the Westwater Research Centre has argued that the Territorial Land Use Regulations be amended to provide exemptions for operators from individual land-use permits whenever they have negotiated and signed a "comprehensive conservation agreement" (Thompson, 1984). While such agreements would probably be most applicable in cases of large petroleum or mining projects in the North, comprehensive agreements are probably a better vehicle for ensuring that long-term conservation strategies are indeed employed than is the case under current requirements for many land-use permits.

Thompson (1984) also pointed out another salient feature of such conservation agreements:

"...there would be a broader base for making trade-offs by acknowledging that some conservation losses should be endured because they are outweighed by offsetting gains in other conservation respects."

This element of negotiated choices adds a significant new dimension to northern development planning and could allow greater flexibility for northerners, government and industry than existing inflexible acts and regulations. This capability for flexible interpretations of the basic intent of northern resource regulation may be essential to the success of future land claim agreements:

"In northern Canada, if settlements of aboriginal land claims proceed on the model of the COPE (Committee for Original Peoples' Entitlement) Final Agreement, they will provide a "push" toward the negotiation of comprehensive land-use agreements involving native peoples, the federal and territorial governments, and industry. Only through such agreements will it be possible to knit together the various requirements of native land surface rights, renewable resource management agreements, government regulations, and industry concerns to produce a workable operating regime for development projects." (Thompson, 1984)

Rueggeberg and Thompson (1984) further develop the theme and advocate a change from regulation to management and point out the advantages resulting from such enhanced flexibility:

"We have advanced the idea in the Westwater publication "Environmental Regulation in Canada" that there are benefits to be gained if government places less emphasis on its role as regulator/policeman and more emphasis on its function as a resource manager. Certainly, in jurisdictions like northern Canada where government is the owner of natural resources, it is appropriate that government emphasize management rather than regulation. The distinction is more than a semantic one. If a management approach is taken the emphasis shifts to problem-solving rather than policing and prosecution.

This shift in roles does not imply that developers will be less strictly supervised. In fact, the contrary is more likely. Enforcement by threat of prosecution is often unconvincing, and prosecution, itself, is costly and time-consuming, and consequently is rarely used. On the other hand, managers, who have worked cooperatively with developers in setting goals and defining procedure, have higher expectations of performance and a wider range of available responses if expectations are short changed.

They know how to use contract provisions to ensure performance and have the flexibility to change requirements when unexpected circumstances occur. Good regulators also know how to be more subtle and flexible than merely to resort to threats of prosecution when things go wrong, but they are often constrained in their responses when they are operating under a strict regulatory regime." (our emphasis)

Another inherent advantage of negotiated conservation agreements is that they would tend to enhance consultation between the parties-at-interest and focus discussions at the interface between the community, the proponent developer and regulatory agencies. In addition to setting out clear, long-term objectives for conservation and resource management, the agreements allow regulatory agencies to shift their energies from that of a "policeman" to that of resource managers in partnership with local peoples and resource developers.

Further, agreements place greater responsibility on proponent developers to initiate and carry out programs for social and economic developments which they evolve to suit the realities of each specific project. Companies and communities are, by definition, in a better position to develop adequate programs than are distant regulatory bodies enforcing rigid statutes. Further, each party is more likely to adequately perform its required services, having negotiated their specific responsibilities, rather than having them imposed through a diffuse system of regulation.

These principles led Rueggeberg and Thompson (1984) to recommend that:

"...companies should be encouraged to negotiate conservation packages as well. These could include not only commitments to use sound conservation practice in the conduct of their operations but also commitments to undertake special protection or restoration projects or even to set aside and manage special conservation areas."

Certainly, this is an area which should be carefully examined as part of continuing work under the Northern Regulatory Review.

4.5 Bonding and Rate-Base Licence Requirements as Self-Regulatory Mechanisms

There is much to be said for developing regulatory mechanisms that allow for the evolution of innovative solutions to resource management/conservation questions by proponents and local communities. "Self-regulatory" mechanisms, in addition to being cost-effective, enhance consultation and they free government to address broader questions of regional planning objectives.

Indeed, within the developing milieu of aboriginal claims, division of the Northwest Territories, political devolution and parallel initiatives to increase provincial-type powers in the north, new approaches to regulatory agreements will probably become the norm rather than the exception.

Two approaches to self-regulation, distinct from the contractual-type agreements noted in section 4.4, which probably merit increased attention are bonding agreements and use of rate-base licence requirements.

Bonding agreements, which result in legal requirements for performance against funds deposited in advance of or during project developments, allow proponents great flexibility in meeting the intent of environmental and socio-economic legislation. In many cases, solutions to difficult conservation or socio-economic questions may have to be developed in conjunction with the project itself.

Performance bonds allow proponents time in which to adequately assess alternatives through ongoing research. In consultation with government, the results of that research and experience gleaned during ongoing phases of development can be employed to bring about new and better approaches.

A good example of an operative, bonding process is that used by the Alberta government in setting reclamation objectives for oil sands mining operations. Having set a broad, general objective for industry to restore mined land to levels of productivity equal to, or greater than, that found prior to mining, a fee is deducted from the revenue stream and held by the government. Funds are reimbursed to industry at the close of operations if they meet the overall objectives for reclamation. During the life of the mine, which extends for several decades, industry and governments are free to pursue research strategies and experimental techniques to satisfy the intent of the legislation for land conservation.

Rate-base licence requirements, as presently employed by regulatory agencies, are highly focussed on economic or engineering aspects of the development. Environmental, socio-economic monitoring and research are generally considered as being "outside" the realm of economic consequence and, as such, costs for these requirements are deferred to the developer and/or government agencies. One must question if the national interest is fully served by licence requirements that do not consider environmental and socio-economic "costs" as part of the overall base against which rates are set for development.

Further, one could argue that conditions imposed on developers that do not allow them recourse to some degree of reimbursement from the revenue stream are unfair. Certainly, if some mechanisms were evolved by NEB to allow for this, it

would greatly facilitate the funding of such programs in proportion to the rate, level and type of project. This "self-adjusting" mechanism would not only provide a guide for funding priorities, but could be set up to allow local communities, government agencies and the developer the time to more fully negotiate and implement adequate programs.

It seems logical that should NEB be given a broader mandate for consideration of environmental and socio-economic questions, there should be a concomitant obligation for that licencing body to make adequate provision for funding avenues proportional to the development.

These complex questions of revenue allocation, northern representation and licencing requirements of the NEB would have to be carefully considered in further studies.

5 SUGGESTED STRATEGY FOR COMPLETION OF THE NORTHERN REGULATORY REVIEW

5.1 Regulatory Reform in Perspective

The July 1984 terms of reference for the Northern Regulatory Review anticipated that the next phase of the review should involve two or more case studies that would bring regulatory problems into focus for discussion at a workshop early in 1985. The present review was originally intended to define data needs for the case study/workshop approach, to recommend candidate case studies and to identify personnel qualified to assist the Northern Regulatory Review Group during the case studies and resulting workshop. Several departures from this originally proposed focus are outlined below and in Section 5.2.

This review deliberately focussed considerable attention on a number of departments and agencies beyond DIAND and examined their attempts at regulatory reform between 1975 and 1984. This approach was followed for two reasons. The first relates to the unusual jurisdictional scope of DIAND in relation to other federal departments. Most departments have a Canada-wide responsibility and are defined by relatively discrete subject areas; in contrast, the northern development part of DIAND has a geographically defined mandate, involving only part of Canada, but with responsibility for many different subject areas of administrative involvement. The anomalous existence of one federal department whose jurisdiction is defined mainly by geographic rather than subject criteria means that such a department has many more chances for regulatory overlap with subject-oriented departments. This is especially so since the latter are not excluded from exercising some jurisdiction in northern Canada. Unless DIAND were re-designed to be an absolute "single-

window" agency for northern Canada, to the exclusion of other federal departments, there will be a continuation of the regulatory interactions and overlaps that are so well documented. As a result of these circumstances, it was evident that this review had to be broad enough to identify all of the diverse points at which various agencies interact or overlap with DIAND's northern activities.

The second reason for the relatively detailed review contained in Sections 2, 3 and 4 was to emphasize the large amount of documentation that already exists on the subject of regulatory complexity. As noted by Stanbury and Thompson (1982), if actual regulatory reform in Canada has been miniscule, the same cannot be said for the study of regulations and its institutions. The same authors suggested that Canada may simply be at an earlier stage of regulatory reform than is the case, for example, in the United States. Regulatory reform in that country is now beyond the "articulation of demands" stage and well into the "political response" stage (Stanbury and Thompson 1980).

The suggested steps for completion of the Northern Regulatory Review (Section 5.2) stress the importance of building on what is already done. The surest way to accomplish this is to move directly to an action-oriented program that blends with other current initiatives of the federal government's ministerial task force on government structure and with evolving regulatory approaches within territorial governments.

There are complex relationships between government and regulatory agencies which must be recognized to place the Northern Regulatory Review in perspective. It is important to note here that this is a subject of active research. Some researchers who have studied relationships between government

and regulatory agencies have emphasized the importance of transferring a political role to the regulatory agencies (Schultz 1982). This suggestion has, in fact, been widely applied in the Province of Alberta where a number of members of the legislative assembly have been named to various boards, commissions and regulatory agencies. The stance of the present government on this question is not known, but the recently named ministerial task force is expected to examine, among other things, relationships between government and regulatory agencies such as NEB.

In northern Canada, the Norman Wells decision has been documented as a case in which the minister overturned the recommendations of NEB and FEARO reports (Page 1981). Other researchers have proposed that the authority of ministers to dispose of the decisions of so-called "independent" regulatory agencies almost at will, under the euphemistic term "right of appeal to the Minister of Governor in Council", be withdrawn (Hartle 1979). It is suggested, instead, that a minister or a ministry be empowered to declare, in advance of a decision by a statutory regulatory body, that it deemed the matter of such general concern or importance that it would consider the agency's recommendation but would take ministerial responsibility for the decision. If a ministry wished to declare that one or more particular regulatory agencies henceforth would play an advisory role only, so much the better (Hartle 1979). Questions such as these are considered to be beyond the scope of the Northern Regulatory Review, but they are part of the perspective in which that review will be received.

5.2 Completing the Northern Regulatory Review

The central conclusion of this mid-point examination of the Northern Regulatory Review is that the remaining steps in the review must avoid the temptation to rework well-ploughed soil.

Since 1978 there have been many analyses of the increasingly complex, and decreasingly efficient, regulatory system in Canada. This subject has been analysed by numerous case studies¹, by a variety of government initiatives, including task forces and senate committees², and by a large number of research investigations³. Regulatory reform also continues to be the subject of workshops, seminars and conferences⁴ and there is no shortage of texts on the subject⁵.

¹ Ames et al. 1980, Economic Council of Canada 1979, 1981, Gibson 1978, Graham 1982, Graham et al. 1984, Howell 1978, Hunt and Lucas 1980, Intergroup Consulting Economists Ltd. 1984, Macpherson 1978a, 1978b, MacLeod 1978, McAllister 1982, Wojciechowski 1982

² Economic Council of Canada 1979, 1981, Hastings 1983, 1984a, 1984b, Horte 1983, Keith et al. 1976

³ Bankes and Thompson 1980, Beanlands and Duinker 1983, Burnet 1984, Castrilli and Lax 1981, Emond 1978, 1983, Finkle and Lucas 1982, 1983, Gamble 1981, Hartle 1979, Hendry 1983, Hunt and Lucas 1980, Lang and Armour 1980, Lucas and Bell 1977, Rueggeberg and Thompson 1984, Schrecker 1984, Schultz 1982, 1983, Thompson 1980, Usher and Beakhust 1973, Yarranton 1982

⁴ Canadian Council of Resource and Environmental Ministers Environmental Impact Assessment Task Force 1978, Canadian Institute of Resources Law 1984, Case et al. 1983, Finkle and Lucas 1982, Third National Workshop on People, Resources and Environment North of 60° 1984, Watson 1984

⁵ Brown-John 1981, Doern 1978, 1979, Hartle 1979, Stanbury 1980, Stanbury and Thompson 1982

Some of these studies have focussed specifically on the matter of accountability and fairness (Case et al. 1983), but all of them have made it clear that the regulatory setting in Canada is still one of increasing complexity, unlike the United States approach that is marked in recent years by deregulation. This state of affairs is no less true for northern Canada than it is for Canada as a whole. In summary, the problem is well defined. That northern Canada is administered today by a regulatory maze is well documented. The viewpoints of those subject to regulatory control, those jostling for regulatory powers, and those who make a study of such matters have already received much publicity.⁶

The biggest challenge facing the Northern Regulatory Review is how to turn a review and a study into action. The newly appointed ministerial task force to examine federal government structure and function may provide the vehicle for action, although the last attempt at a task force approach to regulatory reform -- admittedly not at a level involving senior ministers -- did not lead to action. Stanbury and Thompson (1982) documented the example of the Parliamentary Task Force on Regulatory Reform which, despite its promptness and pragmatic approach, apparently "sunk without a trace". To reduce the probability of this fate for the work of the Northern Regulatory Review Group, we recommend that the next phase of this work avoid further documentation of regulatory problems by the case study approach except in cases where specific conclusions could be tested. The works of Ames et al. (1980), Economic Council of Canada (1979, 1981), Gibson (1978), and Hunt and Lucas (1980) are all examples of case studies that have already adequately documented the

⁶ Attachment 2 provides a sample of quotations on the subject of Canada's 1984 regulatory milieu, with emphasis on circumstances in northern Canada.

difficulties and the need for regulatory reform. The Northern Regulatory Review should move from the case study and workshop stage to one of negotiated innovation.

In our opinion, the Northern Regulatory Review has now reached the stage where it should focus on preparation of material that is, in any case, likely to be requested from the department by the recently named ministerial task force. It is important that DIAND's further work on the Northern Regulatory Review not have its agenda set totally by the more wide-ranging ministerial task force. Some recommendations for further work in the Northern Regulatory Review are offered below.

As is amply illustrated by the preceding sections, questions surrounding northern regulatory reviews are complex, transcend jurisdictional, regulatory and political boundaries and have direct policy ramifications for administrators and elected officials, alike. Our overview has identified several key areas in which further, careful studies are needed to develop new principles and procedures regarding northern economic and political development.

As indicated in Sections 4.1 and 5.1, and in Attachment 2, much has already been said about this topic by a diverse range of authors. Northerners, academics, public interest groups, government departments and industry representatives have all contributed to a large body of existing literature on the subject. It is our belief that future research should, therefore, concentrate specifically on critical issues relevant to Northern Regulatory Review and develop recommendations that would facilitate the early implementation of appropriate plans for action.

What follows is a listing, by category, of those key issues identified in our overview for which recommendations have been formulated. Clearly, each category could become a significant area for research. It is our conclusion, however, that future research should be structured within a rigidly-defined time-frame and aimed at producing results which may be applied directly to an active policy process for structural change.

5.2.1 Case Studies

The nature of individual development projects is extremely variable, the availability of information varies from project to project, and there has been a considerable array of approaches used for regulation of northern projects. For all of these reasons, it is virtually impossible to draw conclusions of general application strictly on the basis of case study comparisons.

In our opinion, additional detailed case study analyses would be of only limited value for completion of the Northern Regulatory Review. We conclude that a more detailed case study of northern development projects would not yield many additional insights into the regulatory process beyond the points that are already identified by our analyses.

5.2.2 The role of northerners

As Canadian northern economic and political development proceeds, more responsibilities for jurisdiction over, regulation of, and participation in, that process will naturally flow northward. Proposals for streamlining the regulatory process may fall into the trap of eliminating, or circumventing, regional concerns. The legitimate local and regional responsibilities and concerns of northerners must be

considered in efforts to streamline regulations or to institute "one-window" systems.

We recommend that existing regulatory models should be carefully examined before new systems are adopted, particularly from the point of view of increasing northern participation in, and responsibility for, the Canadian northern decision process. This review should include experience in planning and regulatory/enforcement processes. Conclusions should be directed at implementation, rather than advisory processes.

5.2.3 Northern administration

The administrative part of overlapping and deficient regulatory mandates in the North is particularly relevant today in view of the ever-increasing desire for territorial governments to strengthen their involvement in regulatory matters. Active research now is focussing on legal and administrative questions for increasing the participation of territorial governments in the administration of federal legislation. Research on such questions will continue whether or not similar research is addressed by the Northern Regulatory Review. We recommend that the remaining work under the Northern Regulatory Review be structured to contribute directly to better resolution of alternatives for administrative responsibility for federal legislation.

5.3 Priority study areas

In addition to the administrative questions noted above, high priority topics for investigation by the Northern Regulatory Review are listed below.

5.3.1 Approval-in-principle

The role and legal interpretation of approval-in-principle as currently exercised in the north must be more clearly resolved. If approval-in-principle is understood to be a first-order policy decision that is conditional, it signifies that specific policies and intentions embrace a basic understanding and acknowledgement of project implications. While developers may conceivably consider the approval-in-principle approach to have inherent drawbacks for investment decisions, there are also advantages. In addition, the critical role of northerners in the process awaits resolution. Future studies on regulatory review should carefully consider all such ramifications and options, with a view to achieving an optimal balance for regulator, proponent, the consumer, and northerners.

Approval-in-principle decisions for developments can be made relatively easily against clear government priorities for development and relatively good baseline scientific data. Regulatory effort can then be directed to ensuring that impacts are minimized through a combination of proponent and government efforts.

These two essential conditions for an effective and credible approval-in-principle system are largely absent in the Arctic. Notwithstanding these problems, we nevertheless recommend in favour of a northern approval-in-principle procedure. However, the question of evolving development must first be addressed.

In this sense, the regulatory conflicts and debate regarding approval processes are probably symptomatic. Overlap in regulatory jurisdictions may have arisen from a

fragmented, reactionary response to individual development proposals and similarly for approvals-in-principle. Regulatory overlap and unclear approvals processes are concluded to have arisen from a common, pervasive problem in the Canadian North: a lack of clear, interpreted development policies.

Government must address, and soon, the process for setting policies in the north in relation to classes of projects. We recommend that planning processes be directed at resolving classification of priorities for types of development proposals which may arise. Policy directives, once started, would probably have a great impact on project evolution and a better chance of acceptability to all the parties-at-interest.

It seems reasonable that a consultation-approvals process has a greater probability for success when development policies are clearly enunciated. Staged-approvals, local discussions and public hearings cannot frame national development policies and priorities. National policies, once enunciated, place those discussions not only in context but in perspective to the national interest.

In short, existing regulatory-approvals conflicts are probably symptomatic of a "policy vacuum". Clearly, the existing "cycle of indecision" has a better chance for resolution once policies are formulated and development priorities are categorized within a northern development framework.

Further, better policy resolution would allow for a clearer definition of environmental protection priorities and will also facilitate approvals-in-principle by clarifying current environment protection-resource development ambiguities.

We conclude that any northern regulatory review would be incomplete unless proper acknowledgement was given to the urgent need for a concomitant examination of the Canadian northern policy development process.

5.3.2 NEB/FEARO/DIAND conflicts

Exemption from EARP of all projects which fall under NEB jurisdiction may present long-term potential conflicts. The criteria under which exemption would be granted would have to be carefully examined and developed, especially in light of phased or staged approvals.

The FEARO process, as evidenced by the recent Beaufort Sea Hearings, consists of a non-adversarial forum in which there is a free exchange of views, concepts and input from community residents, industry and intervenors. Should the FEARO process be precluded from major northern development reviews, the only recourse for local residents and government would be the adversarial, judicial process of the NEB hearing. Further examination and study could focus on potential avenues to incorporate the best features of the non-adversarial EARP process with the advantages of fewer hearings under an altered NEB process.

It is recommended that future studies focus on possible ramifications and solutions to the FEARO/NEB conflict with particular attention paid to:

- i) possible amalgamation of the best features of the NEB/FEARO processes;
- ii) examination of regulatory procedures especially as they apply to NEB requirements affecting the legitimate mandates of northern enforcement agencies (GNWT, GYT, DOE and DIAND);

- iii) examination of potential new avenues for incorporation of environmental and socio-economic considerations in NEB decisions. For instance, post-development environmental and socio-economic monitoring, points which have continuously bedevilled northern developers, government regulators and communities, could be tied to rate-base costs as part of the NEB permit conditions. This aspect, especially if EARP hearings were excluded from major developments, should be researched further.

5.3.3 DIAND/GNWT conflicts

A pressing question is the uncertain, poorly defined, linkage between federal and territorial agencies. Criticisms of inter-agency competition often focus on the confusion that it creates amongst those subject to regulation, but the inefficiencies of decision-making and the overall increase in number of persons employed in the public service are other negative features of inter-agency competition. For the next phase of the Northern Regulatory Review we recommend that immediate attention be given to innovative negotiation to sort out the conflicts and overlaps inherent in DIAND's regulatory role in relation to the new NWT resource development policy. Such study should focus on a critical time-table for implementation of recommendations which may be adopted.

5.3.4 Phased approvals and their timing

The impact of a series of "mini-approvals" within the scope of earlier "approvals-in-principle" could be very significant. Indeed, this single aspect requires more study from both a legal and regulatory viewpoint.

As is clearly evidenced by the history of hydrocarbon and mineral exploitation in the Arctic, economic and political priorities change with time. These changes in economics or policies may have direct consequences for project developments and, therefore, local residents and regional or national governments. This fact alone argues strongly for the allocation of further powers of approval and regulation of development to northerners. As such, an expanded phased approval process also has implications for local communities as they may influence larger, regulatory processes. Difficult questions as to which agency, regulatory group or local community has the "final say" need to be resolved before they become political, fractious forums. All these potential aspects should be addressed by further work under the Northern Regulatory Reviews.

In regard to timing of approvals, clearer definition is needed on the point in the process at which definitive decisions will be made. This assumes that government will also evolve mechanisms to clearly define the type and amount of information needed for decisions within those time-frames.

Proper definition of the point in the process at which approvals may be granted may be the single most difficult issue for resolution, surpassing even definition and criteria for the type and amount of data necessary for those decisions. By comparison, timing of approvals is probably the single most important factor for proponent developers. Further study should focus on this aspect with a view to evolving better criteria for the timing of approvals in association with data requirements. Indeed, a clearer definition of timing for approvals could greatly clarify existing regulatory roles and facilitate necessary planning for proponents.

5.3.5 Possible Consequences of Decentralization

Decentralization is a prominent force in the continuing evolution of the northern regulatory framework. Industrial operations are also a part of this trend towards decentralization of decision-making.

Although there are compelling reasons for decentralization, a balanced approach must recognize that there are disadvantages. The basic organizational principle of unity of command is abrogated when there is a splitting in the chain of command. There can even be impairment of the important constitutional principle of ministerial responsibility, as is the case in the NWT where there is still a reporting relationship from regional operations to non-elected officials. At the federal level, ministerial responsibility must also be considerably weakened in the case of COGLA which reports to two ministers. The impact of decentralization upon the northern regulatory framework should be recognized as one element of the next phase of work under the Northern Regulatory Review.

5.3.6 The "single-window" concept

Each successive "single-window" approach in northern Canada has had a reduced focus and scope. The "single-window" focus has, in effect, diminished both in terms of seniority of representation, powers and scope, while the number of "windows" has significantly increased. Parallel with this trend, it is clear that northern acts and regulations have been developed as a direct response to specific northern development proposals.

Since there has been no overall development policy framework operative in the North, the legislative responses

have necessarily been fragmented, reactionary and poorly co-ordinated. As such, current conflicts, overlaps and gaps in the regulatory environment of the Canadian North appear to be directly attributable to the process of evolution in which they have developed. There is little to suggest that the process of regulatory duplication and conflict will stop until an overall policy strategy or development framework is developed for northern Canada. These aspects could well be the subject of further, more detailed, study.

5.3.7 Mediation and Negotiated Conservation Agreements

The inherent advantages of mediated settlements and negotiated conservation agreements is that they tend to enhance consultation between the parties-at-interest and focus discussions at the proper interface between the community, the proponent developer and regulatory agencies. In addition to setting out clear, long-term objectives for conservation and resource management, such agreements allow regulatory agencies to shift their energies from that of a "policeman" to that of resource managers in partnership with local peoples and resource developers. Such agreements also place greater responsibility on proponents to initiate and carry out programs for social and economic development which they evolve to suit the realities of each specific project.

The full, potential role which these approaches might play in a wider northern regulatory review should be thoroughly explored.

5.3.8 Bonding and rate-base licence requirements as self-regulatory mechanisms.

Bonding agreements, which result in legal requirements for performance against funds deposited in advance of or

during project developments, allow proponents great flexibility in meeting the intent of environmental and socio-economic legislation. Performance bonds would also allow proponents time in which to adequately assess alternatives through ongoing research. In consultation with government, the results of that research and experience gleaned during ongoing phases of development could be employed to develop better approaches.

Rate-base licence requirements, as presently employed by regulatory agencies, are highly focussed on economic or engineering aspects of the development. Environmental, socio-economic monitoring and research are generally considered as being "outside" the realm of economic consequences and, as such, costs for these requirements are deferred to the developer and/or government agencies. One must question if the national interest is fully served by licence requirements that do not consider environmental and socio-economic "costs" as part of the overall base against which rates are set for development.

If mechanisms were evolved by NEB to allow for this, it would greatly facilitate the funding of monitoring and research programs in proportion to the rate, level and type of project. This "self-adjusting" mechanism would not only provide a guide for funding priorities, but could be set up to allow local communities, government agencies and the developer the time to more fully negotiate and implement adequate programs.

It seems logical that should NEB be given a broader mandate for consideration of environmental and socio-economic questions, there should be a concomitant obligation for that licencing body to make adequate provision for funding avenues proportional to the development. These complex questions of

revenue allocation, northern representation and licencing requirements of the NEB would have to be carefully considered in further studies.

5.4 A Suggested Study Group

The creation of a study group is not, by itself, an assurance of action. But we are of the opinion that the study group approach does present an efficient way to reach a negotiated concensus.

We consider it important that a DIAND-sponsored study group for a Northern Regulatory Review not have its agenda set totally by the recently named ministerial task force.

Suggested terms of reference for the initial work of the recommended study group are briefly outlined below:

- Step I. Review of all previous research to identify avenues for immediate application or implementation.
- Step II. Select recommendations and conclusions applicable, with special reference to "deregulatory" processes, including self-regulatory mechanisms, and questions relating to progressive allocation of jurisdictional responsibilities to the north.
- Step III. Prepare material to respond to requests expected from the recently named ministerial task force.

In particular, we recommend that the study group address the following questions and topics:

- i) A critical review of two alternative suggestions for the relative roles of WEB and FEARO: one suggestion is that regulatory matters would be simplified if all aspects were handled by NEB with no involvement of FEARO; the other approach is that NEB should examine only technical and financial questions with environmental and socio-economic matters handled by FEARO. The review should be followed by a recommendation on which of these alternatives is the preferred approach.
- ii) A critical review of conflicts between federal policies and policies developed by the Government of the Northwest Territories in relation to Development Impact Zones.
- iii) A critical review of approval-in-principle as practised, with recommendations for improvement of this approach.

5.5 Possible Legislative Initiatives

To be fair, some argue that there is a need for more legislation in the north, not less. Some analysts have suggested that we need an Environmental Protection Act to sort out the role and responsibilities of the federal government in all environmental matters. They also go on to recommend the abolition of the existing ad hoc EARP process and the submission, instead, of a federal planning and review process that is rigorous, sensible and just.

We agree, as other analysts have suggested, that the process under which northern development occurs can and must be improved, but this need not mean that the next phase of the Northern Regulatory Review should be limited to an analysis of approvals. Before dealing with how we might address the problems facing frontier developments, we must carefully

formulate the objectives of the study. The issue cannot be restricted to approvals. Rather the issue is: How can the planning, timeliness, and methodology of the review and decision-making process for frontier development be made more responsive and responsible? The regulatory review should be allowed to fully consider any legislative avenues which could help to accomplish those objectives.

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ATTACHMENT 1

OBJECTIVES AND RATIONALE OF THE
NORTHERN REGULATORY REVIEW

Objectives of the Northern Regulatory Review

- To undertake a review of the current regulatory approval process for northern programs and projects with a goal to eliminating redundancy and overlap so as to encourage the early development of Northern Canada hydrocarbon reserves.
- To examine the linkages that exist between decisions made by various agencies of government that impact upon resource development project planning and implementation, and make recommendations as to how these linkages may be strengthened.
- To examine the intent of government policies to control resource development projects through the application of government regulations, and to determine whether existing regulations are satisfactory in meeting the intent of these policies.
- To assess the degree to which the resource development objectives of government and industry are being met or hindered by the manner in which regulations are currently being interpreted and enforced.
- To recommend means by which government policies and regulations could be coordinated and integrated in order to improve investor confidence in resource development projects and to make the overall regulatory process more responsive to resource development needs.

Rationale for the Northern Regulatory Review

The Northern Regulatory Review is being carried out because of widespread concerns that:

- ° policies affecting northern development are sometimes in conflict and lack sufficient definition;
- ° existing assessment and regulatory processes do not promote investor confidence and facilitate effective project planning;
- ° government approval processes may not be sufficiently responsive to conditions relating to project financing and market opportunities; and
- ° current regulatory and approval processes are overly complex, time consuming, costly, and duplicative.

Such concerns have been raised in recent reports presented to government, for example, Mr. V. Horte in his Task Force Report on Pipeline Construction Cost and the Special Committee of the Senate on the Northern Pipeline Report, Marching to the Beat of the Same Drum. As DIAND has the statutory responsibility for economic development, environmental management and coordination of federal activities in the North, this Review must of necessity involve other federal departments, agencies and the Territorial governments.

ATTACHMENT 2

**A synopsis of viewpoints of the present
regulatory approach in northern Canada**

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"One of the most bewildering problems we have run into in the Canadian offshore is the herd of agencies that have a hand in the regulatory process, ... Canada today has a rare opportunity. Offshore development is relatively new here, and with this clean slate, you have the opportunity to write one of the best regulatory regimes in the world." (McIntosh (1984) as quoted on pg. 8, Oilweek 35(31))

"There are three basic principles that should govern any overall regulatory process, and the northern regulatory system should be reviewed from the standpoint of those principles. The first of these is the need for linkages between various regulatory processes, and to ensure they are linked to government's and the applicant's decision-making process. The second is that regulation should be designed to identify the objectives or requirement, allowing industry to develop the specific means. Regulation should be based on the principle of self-assessment of operating methods by industry, together with performance monitoring by government. There is an increasing tendency for government to tell industry what to do and how to do it. ... The third is that the overall regulatory process, including public reviews necessary within it, should be made more compatible with the project time frame, including the market window that is the basis to project economics." (Lee et al. 1984)

PUBLIC INTEREST VIEWPOINTS

"...who can be against regulatory reform? The evocative characteristics of the word "reform" alone should be enough to indicate the side on which the angels stand." (Economic Council of Canada 1979)

"So many departments have their fingers in the same pie that available expertise is diluted." (Mills 1984)

"No fewer than five federal departments have legislative responsibilities for protection of the arctic marine environment ... Given the administrative problems described above and the absence of a clearly stated Arctic Ocean policy, there are far too many co-ordinating committees for the Arctic Ocean." (Mills 1984)

"A number of trends are encouraging government and industry today to consider contractual arrangements as a substitute for government regulation of resource development projects. Many aspects of a project can be handled in this way, particularly in the fields of managing social and environmental impacts and providing for the infrastructure requirements that the project imposes at the regional or local level." (Thompson 1984)

"An integrated regulatory structure is needed, not only to facilitate hydrocarbon production and to ease the regulatory burden on oil companies, but also to protect the peoples, environment, and resources of the Arctic Ocean from adverse impacts of hydrocarbon development and transportation activities." (Mills 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"First, we have to civilize our conduct of internal relations. We've had guerrilla warfare going on in various levels of government." (Prime Minister-elect Mulroney, as quoted in Time, September 17, 1984, p. 14)

"It is a regulatory mess, there is no question about that." (M. Taschereau in Hastings (1983), Issue 35:16, 14-9-1982)

"...I do know that there is a formidable array of regulations, permits, licences, evaluations -- hurdles to be overcome. It is an absolute mess, and that is why we have tried to address part of that problem in a recommendation for a co-ordinator." (C.G. Edge in Hastings (1983), Issue 36:84, 15-9-1982)

"If you are looking at the environment, as you have said, north of 60°, you can forget COGLA. It is not in the picture for that region. It is DIAND who has responsibility there." (J. Garin in Hastings (1983), Issue 37:68, 16-9-1982)

"Co-ordination is a tricky business to get into. There are attempts to co-ordinate through the exchange of information. Given the scarcity of resources, both within industry and within government, it is in everybody's interest to ensure that there is not duplication, and there is a wide range of mechanisms that try to ensure people are not doing projects that duplicate." (G.N. Faulkner in Hastings (1983), Issue 31:11, 22-6-1982)

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A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"Again, the word of warning is that you should be prepared for long delays when dealing with DIAMD in controversial applications for land. Land claims, unidentified park boundaries, and numerous other issues all come into play with DIAMD's review process. Should you be faced with having to run through such a gauntlet, it is best to do so with your eyes open and a general appreciation of what can be expected." (Hemstock 1984)

"Among the regulatory requirements for an operating oil company I notice items such as: a demonstration of 'Canadian content'; the employment of native peoples; and, in provincial/territorial jurisdictions, requirements about the location and use of capital funds within their boundaries. While these may reflect desirable government objectives, once in the hands of bureaucratic regulators they impose an enormous paper burden on the private sector..." (Morton 1984)

"Once government states a policy that non-renewable resource development in a region is in the regional and national economic interest, there should no longer be any debate among various government agencies as to whether such development should occur. Instead, the efforts of various concerned government agencies should be directed towards finding a compromise solution that best accommodates their interests as well as development interests." (Lee et al. 1984)

PUBLIC INTEREST VIEWPOINTS

"...Esso Resources Canada Limited cites 32 federal acts that could affect its northern operations, names 22 sets of regulations that apply to arctic shipping, and lists the many agencies and committees responsible for these acts and regulations. Esso's complaint concerns the difficulty of satisfying all the conditions and agencies involved and the cost and time required to do so." (Mills 1984)

"We have advanced the idea in the Westwater publication 'Environmental Regulation in Canada' that there are benefits to be gained if government places less emphasis on its role as regulator/policeman and more emphasis on its function as a resource manager. Certainly, in jurisdictions like northern Canada where government is the owner of natural resources, it is appropriate that government emphasize management rather than regulation. The distinction is more than a semantic one. If a management approach is taken the emphasis shifts to problem-solving rather than policing and prosecution." (Rueggeberg and Thompson 1984)

"In the absence of policy direction and co-ordination, the separate committees, depending on their degree of power and the initiative of the lead agency, make policy decisions de facto. it also results in inefficiencies and regulatory confusion. As development activity increases in volume and extent, it undoubtedly will exceed the capability of the existing regulatory system." (Mills 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"I think the more we can clarify for potential project sponsors the better. The one thing that investors and project sponsors abhor is uncertainty. I think they are faced with very considerable uncertainty from many aspects of government activity. The more you can assist in encouraging early clarity and whether the projects are 'go' or not is very worthwhile." (C.G. Edge in Hastings (1983), Issue 36:83, 15-9-1982)

"...we need to have a common federal position. That is why the COGLA single window is so critical. Otherwise, the industry is approached from 16 different quarters." (H.A. Reynolds in Hastings (1983), Issue 36:11, 15-9-1982)

"To assist us in fulfilling our mandate, we work closely with the Department of Energy, Mines and Resources and the Department of Indian Affairs and Northern Development. As COGLA's administrator, I report to the deputy ministers of both those departments. I also meet regularly with senior officials of both departments to review policy and to ensure that we are all heading in the same direction." (M. Taschereau in Hastings (1983), Issue 35:8, 14-9-1982)

"...the oil industry wants COGLA to be a one-window approach. We hear this all the time.... That may be the ideal situation, but COGLA is not so." (M. Taschereau in Hastings (1983), Issue 35:16, 14-9-1982)

.... Continued

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"These issues were identified during the projects initial internal review. The evaluation made at that time was that technical solutions were possible for any of the objections based upon the projects design and operations, and that the "softer" issues would present major, but not insurmountable, obstacles. This ranking proved accurate, as serious objections based on environmental considerations were addressed and dealt with at a relatively early stage of the review. It was land claims and the conflict with the national park that provided the steady, drawn-out opposition." (Hamstock 1984)

"No additional regulations are needed to implement resource development projects in a satisfactory manner. What is needed is a revision of the way regulations are implemented, so that the regulations and regulators become more facilitative of development." (Lee et al. 1984)

"We need a program which minimizes bureaucracy and government regulation, and I talked earlier about the hamstring feeling that the Canadian oil and gas entrepreneur feels working within the system of the NRP." (G. Morgan in Hastings 1984a, Issue 13:13)

PUBLIC INTEREST VIEWPOINTS

"Bureaucratic bungling and the regulatory maze are merely symptoms of the problem ... Canada requires an independent Arctic Ocean policy council, an effective federal mechanism for integrating and directing the various elements of an Arctic Ocean policy, and a comprehensive system for regional planning for implementing this policy that includes meaningful participation of Inuit." (Mills 1984)

"Although these regulations [Arctic Shipping Pollution Prevention Regulations and the Shipping Safety Control Zones Order] were drafted in haste, they are, in general, well conceived and realistic. As arctic shipping experience is gained, these regulations should be modified to reflect improved knowledge of ice, ship performance and construction standards." (Pullen 1984)

"I am concerned that arctic marine transportation is being restricted too much by all sorts of rules and regulations. Mariners already must abide by the Arctic Waters Pollution Prevention Act (AMPPA) and its regulations, the Safety of Life at Sea Regulations, the Canada Shipping Act, and MORDREG (voluntary vessel-traffic management system); here is a new set of rules [arctic marine transportation authority] that may be superimposed on the existing rules." (Pullen 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"In the north, DIAND directly controls all crown lands and no such agreements are in place. Protection must be exercised through the existing regulatory processes. Consequently, there are a number of areas of concern to Parks Canada that should be taken into consideration during the regulatory review, eg.:

- 1) Water Licence Approval and Water Quality generally -- it is important that the Water Licence Approval process north of 60 recognize the significance and importance of Parks Canada's mandated responsibility for the preservation and protection of natural and cultural heritage resources.

- 3) Environmental Assessment and Review Process -- the E.A.R.P. is applied very conservatively north of 60. Many large resource development projects, which in the south would normally be referred to F.E.A.R.O. for review, are licensed and controlled within existing regulatory processes. This has not always provided satisfactory protection to national parklands.

- 4) Referral of applications for land use/water permits to Parks Canada for review -- There is a need for a formal referral process to avoid the vagaries of informal communication arrangements which presently exist." (Memorandum by W.A. Gryba, District Manager, Northern Park Establishment, Parks Canada, 21 February 1984)

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A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"The National Energy Program is heavily structured and has many bureaucratic and complex elements to it, as well as many opportunities for government direction, so that you tend to be directed towards trying to achieve a maximisation of things like grants and other factors instead of doing what you would do in the normal competitive business environment -- as we, in the oil and gas industry, have done for years, and did very successfully on a strong basis prior to 1960. I would like to emphasize, Mr. Chairman, that the aspect of entrepreneurialism and the nature of our business requires that kind of sense of ability to do things and do them well without the government telling us exactly how they should be done." (G. Morgan in Hearings 1984a, Issue 13:9)

"There should be a clear linkage between the research activities of government and the types of information government needs to make resource development decisions. ... There needs to be some clarification of the linkage between the NEB process and other processes dealing with social or environmental impacts. We are not necessarily suggesting one process to consider all issues, but duplication of effort should be minimized and the various processes should be carried out in a complementary fashion. We generally believe that the NEB process should deal primarily with assessing technical aspects of specific applications and not be concerned with broad environmental and socio-economic issues." (Lee et al. 1984)

PUBLIC INTEREST VIEWPOINTS

"Despite the fact that most environmental legislation is cast in terms of prohibition and penalty, it is apparent that management and negotiation is, in fact, the essence of Canadian environmental law." (Finkle and Lucas 1982)

"Recent studies have shown that laws which are command/penalty in form are likely in practice to be enforced through a process of negotiation. This suggests that a rethinking of environmental laws may be necessary to reflect this reality and to make the bargaining mode fairer and more objective. However, it has been suggested that the line should be drawn at negotiating the basic legal environmental standards." (Finkle and Lucas 1982)

"A major conclusion is that redesign and rethinking of the legal framework for environmental decision-making is required. Legal rights, duties and obligations of government in enforcement of environmental laws must be rendered more certain. The role of citizens in the process must also be clarified, and a greater public awareness of the techniques for environmental law enforcement must be achieved." (Finkle and Lucas 1982)

"Regulatory reform, particularly deregulation, must buck the tide of Canada's economic history (i.e. increasing intervention). It must also swim against the latest wave of federal efforts to define an industrial/economic development strategy." (Stanbury and Thompson 1982)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"In his review [of Pacific fisheries] Pearce noted that 'the present provisions for protecting and managing fish habitat in Yukon are inadequate for the task. The division of responsibilities among governmental agencies needs to be rationalized, their respective authorities must be clarified and arrangements for planning and project approvals need to be more systematic and effective. Major recommendations related to the above were: 1) repatriation of the Waste Management sections of the Fisheries Act to DFO (from EPS); 2) incorporation of Fisheries approvals into the relevant water licenses; and 3) DFO representation on the Yukon Territorial Water Board.'" (Memorandum by F.C. Boyd, Department of Fisheries and Oceans, 30 April 1984)

"Recent problems related to the Yukon regulatory system include the McIntyre Creek hydro project approval duplication of MWA and Fisheries Act mining regulations and the whole question of placer mining." (Memorandum by F.C. Boyd, Department of Fisheries and Oceans, 30 April 1984)

"The common consensus is that the regulatory regime currently in place is having a negative effect upon northern development due to overlaps, gaps and conflicts between policies and regulations." (Memorandum by W. Oppen, A.D.M., Yukon Territorial Government, 11 April 1984)

.... Continued

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"Firstly, we believe it would be desirable to establish some type of mechanism for coordinating and organizing the multiplicity of issues raised by the many northern organizations, including HTA's, community councils, DIZ groups, etc. This would aid in the early and clearer focus of critical issues and could more effectively coordinate the efforts of the many parties so that the best and most supportable solutions are developed.

Secondly, it would be desirable to have a single window approach to deal with the regulations; we believe that COGLA has been a step in the right direction and could be used as a model for streamlining the entire regulatory process.

We also believe that further consideration should be given to developing guidelines or regulations that would allow for the granting of concurrence for concepts or preliminary plans. This mechanism could serve to provide direction both to the proponent and to the regulatory agencies as the concept advances into a concrete proposal.

We also believe that only agencies who have the power to render a decision on an application should have the authority to call hearings. As you are aware, the Department of Environment has recently put in place a Review and Hearing Process to consider northern development issues well beyond what we believe is their mandate." (Correspondence by G.L. Naight, Esso Resources Canada Limited, 23 November 1983)

PUBLIC INTEREST VIEWPOINTS

"Enforcement by threat of prosecution is often unconvincing, and prosecution, itself, is costly and time-consuming, and consequently is rarely used. On the other hand, managers, who have worked cooperatively with developers in setting goals and defining procedures, have higher expectations of performance and a wider range of available responses if expectations are short changed. They know how to use contract provisions to ensure performance and have the flexibility to change requirements when unexpected circumstances occur. Good regulators also know how to be more subtle and flexible than merely to resort to threats of prosecution when things go wrong, but they are often constrained in their responses when they are operating under a strict regulatory regime." (Rueggeberg and Thompson 1984)

"There is no acknowledgement that the 'face' of the N.W.T. and Yukon may be significantly altered in the next few years by a number of processes which are currently underway. In particular, aboriginal claims, division of the N.W.T., political devolution and other initiatives to increase provincial-type powers. Each of these processes have the potential of affecting the application of regulations as well as review processes over large areas of the North. They may also establish assessment processes or mechanisms within these areas which may be independent of Federal initiatives and as such may require additional co-ordination." (Correspondence by S. Kakfwi, President, Dene Nation, 27 April 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"The National Energy Board, for its part, is conducting a massive overhaul of its regulations and information requirements to simplify, clarify and otherwise streamline these provisions to the greatest extent possible. It is the view of the Board that the Committee has succeeded in increasing pressure to delete certain regulatory requirements, minimize duplication and foster coordination amongst governments, regulators and industry." (Hastings 1984b, Issue 14:7)

"The NEB pointed to increased co-ordination in its dealings with COGLA as a clear example of reduction in regulation. The Board and COGLA recently reached an agreement in principle to establish identical technical regulations with respect to offshore pipelines where both are involved." (Hastings 1984b, Issue 14:8)

"Progress is being made to reduce duplication and to increase co-ordination between agencies, particularly with regard to the interface between the Environmental Assessment Review Process (EARP) and the NEB." (Hastings 1984b, Issue 14:9)

It is recommended "that once the policy framework is in place, the regulatory processes and regulations of appropriate responsible agencies be reviewed to determine whether these fulfill the policy objectives for which they were intended and obvious redundancies be eliminated." (Hastings 1984b, Issue 14:16)

.... Continued

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"In general, industry has been able to work with the present regulatory system and a total grassroots overhaul might prove to be very disruptive. Rather we believe it would be more desirable to make incremental improvements to the current situation with a goal of streamlining by removing overlap and clarifying roles to ensure an effective and efficient decision making process is in place." (Correspondence by G.L. Maignt, Esso Resources Canada Limited, 23 November 1983)

"Currently there is a significant amount of duplication and overlap between the two levels of government and with the various agencies and regulatory commissions as they review applications for everything from a single well program to a major development project (such as Norman Wells). This leads to a multiplicity of reviews and hearings which significantly extends the approval process and increases the associated cost of the process to everyone involved." (Correspondence by G.L. Maignt, Esso Resources Canada Limited, 23 November 1983)

"Government policy must be clear, timely, consistent, and most importantly, integrated, so that industry can get on with its job for planning for the development of Beaufort oil, and by so doing, selecting government in achieving its objectives." (D. Motyko in Federal Environmental Assessment Review Office 1984, p. 93)

PUBLIC INTEREST VIEWPOINTS

"What we have consistently said for many years now is give us the machinery, include us in your whole complex systems, but please include us, give us a chance to deal with environmental effects or socio-economic effects, and when you do you will find that we could be very reasonable. In fact, who knows, may be we would even welcome the oil companies with open arms, once we get these adversarial type things out of the way." (T. Suluk in Federal Environmental Assessment Review Office 1984, p. 41)

"Experiences from both Shetland and Orkney have shown very clearly that the local level, where it's got the right information, and where it's got the right powers, is quite capable of dealing both with other levels of government and with the oil companies to a reasonably successful degree." (R. Butler in Federal Environmental Assessment Review Office 1984, p. 85)

"Unlike the glowing pictures which some people will try to paint about this project (Norman Wells), it has not necessarily proceeded in a way which was promised, nor which is acceptable to the Dene. Neither is there a great deal of confidence that it has been a positive experience, nor that the land and resources within Denendeh have been adequately protected." (L. McLachlan in Federal Environmental Assessment Review Office 1984, p. 93)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"Referring to the Norman Wells pipeline, there is more than the board involved. The Board issued a certificate with given conditions. In those conditions we have to look at environmental issues, socio-economic issues, geo-technical issues as well as other issues. DIAMOND and the Government of the NWT will also look at the same thing." (J. Farmer in Hastings (1983), Issue 36:78, 15-9-1982)

"The intent is to ensure that...all the actors are marching to the same drum beat, if you wish. I think that it is important to achieve that. We have to find a mechanism to do that... We would all carry on our respective responsibilities....knowing what is going on and ensuring that we are on the same drum beat..." (V. Gerin in Hastings (1983), Issue 37:72, 74, 16-9-1982).

"We have now put many hurdles in the way of development, with government regulations, permits, licences and so on, which have increased the uncertainty and caused outlays of much larger sums of money without knowing if there is a chance of recovery. The more we can provide a climate where that uncertainty is reduced, it will be beneficial for Canada as a whole." (C.G. Edge in Hastings (1983), Issue 36:83, 15-9-1982)

.... Continued

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"In general, we believe that it is beneficial to have a single window approach to deal with the regulations. In this regard, COGLA has been a step in the right direction and could be used as a model for streamlining the regulatory process. We also believe that consideration should be given to development of guidelines or regulations that would allow concurrence with concepts or preliminary plans. This mechanism could serve to provide direction, both to the proponent and to the regulatory agencies, as the concept advances into a concrete proposal." (Correspondence by D.M. Murray, President, Alberta Chamber of Resources, 6 December 1983)

"At this preliminary stage of the review Dome would be particularly interested in having your Program Review team examine the merits of early 'Approvals in Principle' leading to ultimate production of hydrocarbons ... Given the extensive, comprehensive EARP review that the Proponents are currently participating in, and the fact that the industry is thoroughly regulated in all matters pertaining to project design and operations, it is our view that there should be no need to refer project specific applications to PEARO for further review." (Correspondence by M.B. Todd, Dome Petroleum Limited, 10 November 1983)

PUBLIC INTEREST VIEWPOINTS

"Mandates overlap or are too vague to give any single department a clear mandate to co-ordinate federal policies and programmes for the arctic marine environment." (Mills 1984)

"This mechanism [to integrate and direct an Arctic Ocean Policy] should not lie within any one department but, instead, should have the power to review and streamline the existing regulatory structure and to ensure that policies for energy, environmental transportation, northern development, science, and so forth are consistent with one another." (Mills 1984)

"When the State of Washington tried to ban tanker traffic in Puget Sound, the decision was set aside by the Supreme Court; however, the municipalities of Puget Sound were still able to regulate loading, unloading, and times of passage of tankers within their jurisdictions. ... Instead of establishing a new national-level regulatory authority in which Inuit are invited to participate, why not help them to get their land claims settled and their municipal governments in order so that they can participate in management as citizens, regulating what happens in their own backyard? Mariners should understand that another level of regulation [arctic marine transportation] authority with Inuit representation] is not going to stop shipping; it is going to involve Inuit and all northerners more intimately in the management of transportation and development." (DuBay 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"The new Canada Oil and Gas Act has provided for changes which introduce the possibility of using it for environmental management and a number of other things. However, in the North the way we are proceeding is to use the Territorial Lands Act and its regulations as the principal means for regulating the use of land." G.M. Faulkner in Hastings (1983), Issue 31:37, 22-6-1982)

It is recommended that "the regulatory processes and regulations of appropriate responsible agencies be reviewed to determine whether these fulfill the policy objectives for which they were intended and that obvious redundancies be eliminated." (Hastings 1984b, Issue 14:7)

"Mr. Marshall says the government is taking strides to make review processes, such as the recent one in the Beaufort, less complicated. He says a new independent Canadian Environmental Assessment Research Council has been created to provide scientific advice to PEARO and other agencies involved in environmental assessment work." (Verbatim Transcript from CBC Inuvik News Special, 8:34 a.m., 3 August 1984)

"If private industry is to operate effectively, it must be freed from obstacles created by excessive government regulation." (March 1979 Speech from the Throne, Government of Ontario, as cited in Stanbury and Thompson 1982)

.... Continued

A SYNOPSIS OF VIEWPOINTS OF THE PRESENT REGULATORY APPROACH IN NORTHERN CANADA

VIEWPOINTS OF THOSE SUBJECT TO REGULATION

"Frontier operators continue to be concerned that several government departments are not administering their legislation and regulations in a fashion that complements Canada's goal of 'Energy Self Sufficiency', as enunciated in the M.E.P. and DIAND's supporting policy of early 'Balanced Resource Development', when they review and comment on frontier exploration and development applications." (Lee et al. 1984)

"What industry wants is to see a planning and regulatory process that is simple, rapid and inexpensive, and one that produces clear and lasting decisions. Does this differ from what the country needs? Not really." (Yarranton 1982)

PUBLIC INTEREST VIEWPOINTS

"The burden of government regulation on the private sector should be reduced and the burden of overlapping federal and provincial jurisdictions should be eliminated. Procedures will be instituted to review the effects of regulatory action on jobs and costs. First Ministers agreed that the whole matter of economic regulation at all levels of government should be referred to the Economic Council for recommendations for action, in consultation with the provinces and the private sector." (Economic Council of Canada 1979)

"Participants who were interviewed from environmental groups frequently believed that they were outspent by industry and that, in any case, the decision was made by government beforehand. Those interviewed from industry uniformly thought that public consultation procedures (mainly hearings) were excessively long, expensive, and often completely futile." (Finkle 1983)

A research study currently underway by the Canadian Arctic Resources Committee is designed to respond to "the widespread impression in industry, government and the public that the decision-making process for environmental assessment procedures is unwieldy, expensive, inconclusive and long." (Canadian Arctic Resources Committee 1984)

VIEWPOINTS OF GOVERNMENT SPOKESMEN

"A thorough review of the proposed \$3.3 billion Polar gas pipeline, with special emphasis on socio-economic and environmental considerations, has been announced by federal Indian Affairs and Northern Development Minister Doug Frith. This is in addition to hearings planned by the National Energy Board and would go over ground already covered by the Beaufort Sea environmental assessment review panel since 1980." (Oilweek, 35(25):4 1984)

"Companies around the world have spent millions of dollars designing these ships. They have assumed that behind these regulations lies a sincere Canadian intent to allow shipping, both international and domestic, in Canadian Arctic waters if the conditions for construction and operation are met... If we are going to have useful and forceful local participation in determining where this Trans Canada Highway [the Northwest Passage] will be, local input must be consistent and coherent along the route." (Stephenson 1984)

"Since the Board conducts its own environmental evaluation and FEARO is mandated to handle early hearings for most other government departments, their duties sometimes overlap. Recognizing this, efforts are being made to streamline the regulatory procedure, an NEB spokesman explained. (Thomas 1984)

"A comprehensive monitoring framework should be developed by government and industry in advance of development and should include residents of the development area." (J. Donihue in Federal Environmental Assessment Review Office 1984, p. 93)

ATTACHMENT 3

Acts and Ordinances that contain
environmental and resource management
provisions pertinent to the north
(Environment Canada 1983)

ACTS AND ORDINANCES THAT CONTAIN
ENVIRONMENTAL AND RESOURCE MANAGEMENT
PROVISIONS PERTINENT TO THE NORTH

<u>Legislation</u>	<u>Administering Agencies²⁴</u>
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FEDERAL STATUTES

A. Federal Type:

1. Arctic Waters Pollution Prevention Act	DIAND, EMR, DOT
2. Atomic Energy Control Act	AECB
3. Boundary Waters Treaty Act	DEA
4. Canada Oil and Gas Act	COGLA
5. Canada Shipping Act	DOT
6. Canada Water Act	DOE
7. Canada Wildlife Act	DOE
8. Clean Air Act	DOE

24. Agencies

AECB	- Atomic Energy Control Board
COGLA	- Canada Oil and Gas Lands Administration
DEA	- Department of External Affairs
DFO	- Department of Fisheries and Oceans
DIAND	- Department of Indian Affairs and Northern Development
DOA	- Department of Agriculture
DOE	- Department of the Environment
DOT	- Department of Transport
EMR	- Department of Energy, Mines and Resources
GNWT	- Government of the Northwest Territories
NEB	- National Energy Board
NHW	- Department of National Health and Welfare
NPA	- Northern Pipeline Agency
YTG	- Government of Yukon

Legislation	Administering Agencies
9. Coastal Fisheries Protection Act	DFO
10. Department of the Environment Act	DOE
11. Department of Fisheries and Oceans Act	DFO
12. Dominion Water Power Act	DIAND
13. Environmental Contaminants Act	DOE, NHW
14. Fisheries Act	DFO, DOE
15. Forestry Development and Research Act	DOE
16. Game Export Act	DOE
17. Historic Sites and Monuments Act	DOE
18. Indian Act	DIAND
19. International River Improvements Act	DOE
20. Migratory Birds Convention Act	DOE
21. National Energy Board Act	NEB
22. National Parks Act	DOE
23. Navigable Waters Protection Act	DOT
24. Northern Pipeline Act	NPA
25. Ocean Dumping Control Act	DOE
26. Oil and Gas Production and Conservation Act	DIAND, EMR
27. Public Lands Grants Act	DIAND
28. Seeds Act	DOA
29. Territorial Sea and Fishing Zones Act	DFO
30. Weather Modification Information Act	DOE
31. Whaling Convention Act	DFO

<u>Legislation</u>	<u>Administering Agencies</u>
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B. Provincial Type:

1. Department of Indian Affairs and Northern Development Act	DIAND
2. Northern Inland Waters Act	DIAND
3. Northwest Territories Act	DIAND, GNWT
4. Territorial Lands Act	DIAND
5. Yukon Act	DIAND, YTG

NORTHWEST TERRITORIES ORDINANCES

1. Area Development Ordinance	GNWT
2. Commissioner's Land Ordinance	GNWT
3. Environmental Protection Ordinance	GNWT
4. Forest Protection Ordinance	DIAND
5. Historical Resources Ordinance	GNWT
6. Pesticide Ordinance	GNWT
7. Petroleum Products Ordinance	GNWT
8. Public Health Ordinance	NHW, GNWT
9. Scientists Ordinance	GNWT
10. Territorial Parks Ordinance	GNWT
11. Wildlife Ordinance	GNWT

YUKON TERRITORY ORDINANCES

1. Area Development Ordinance	YTG
2. Forest Protection Ordinance	DIAND
3. Game Ordinance	YTG
4. Gasoline Handling Ordinance	YTG

Legislation	Administering Agencies
5. Historic Sites and Monuments Ordinance	YTG
6. Lands Ordinance	YTG
7. Parks Ordinance	YTG
8. Public Health Ordinance	NHW, YTG
9. Scientists and Explorers Ordinance	YTG